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3 CLASSIFICATION STANDARDS REGULATION

4 CONSULTATION MEETINGS

5 BEFORE THE

6 NATIONAL INDIAN GAMING COMMISSION

7

8 Wednesday, July 26, 2006

9 10:13 a.m. - 4:40 p.m.

10 Doubletree Hotel

11 Ontario, California

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16 REPORTER'S TRANSCRIPT OF THE PROCEEDINGS

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22 Reporter: G. Joanne Bergren, CSR, RPR  
Certificate No. 6334

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1     ONTARIO, CALIFORNIA; WEDNESDAY, JULY 26, 2006

2     TWENTYNINE PALMS BAND OF MISSION INDIANS

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4           CHAIRMAN HOGEN: Okay. We are convened

5 here in Ontario, California, on the 26th of

6 July 2006, pursuant to proposed regulations and

7 definitions changes that the National Indian Gaming

8 Commission promulgated in the Federal Register on

9 the 25th of May dealing with, generally, the issue

10 how one distinguishes equipment that can be used for

11 the play of uncompacted Class II games as opposed to

12 electronic facsimiles of games of chance that are

13 played only pursuant to a Tribal/State Compact.

14           I'm Phil Hogen, Chairman of the National

15 Indian Gaming Commission. And welcome Twentynine

16 Palms Band of Mission Indians here for this

17 consultation session.

18           Commission Chuck Choney is seated here with

19 me. And from our Washington office we have our

20 Chief of Staff Joe Valandra. Michael Gross from the

21 office of general counsel. And Alan Phillips is  
22 from our Sacramento office. John Hay is in the  
23 general counsel's office in Washington. Eric  
24 Schalansky is our regional director from Sacramento,  
25 and I expect you know Eric. And we have Penny



1 Coleman, our acting general counsel, and Natalie  
2 Hemlock, who is an assistant to the commission. And  
3 we have Manny Sanchez here in the back, who is from  
4 our satellite office here in the Temecula area.

5 So we are eager to hear what your tribe has  
6 to offer with respect to the proposals that we've  
7 published, and we would be happy to try and respond  
8 to questions that you have. We aspire to get all of  
9 the input we can from tribes and, sometime early  
10 this fall, decide if we're going to finalize these  
11 regulations and should the proposal be changed based  
12 on what we've heard in the meantime.

13 So would you please introduce yourselves  
14 and tell us how you're affiliated with the tribe or  
15 the tribal game operation, and then we'd very much  
16 like to hear your comments.

17 MR. MURILLO: I'm Joe Murillo. I'm the  
18 Executive Director from the Gaming Commission, so I  
19 would not be directly involved with that type of  
20 proposal with the definition of Class II machines,

21 et cetera. It's up to the operations and the tribe  
22 and legal counsel to determine. As you all know,  
23 we're just oversight for the Commission.  
24 MR. MIKE: I'm Dean Mike, chairman of the  
25 Twentynine Palms Band of Mission Indians.

1       Referring to Class II, we looked at them  
2 through counsel, and through his advice looking at  
3 how it affects our tribe, we don't have, right now,  
4 Class II machines. We have Class III. But that is  
5 something that we're interested in, maybe, in future  
6 growth if those definitions are kind of confirmed  
7 and what we can do and establish if we can use them  
8 in our facility. So we're just looking at that, and  
9 I'll just refer to Mr. Kovall here.

10       MR. KOVALL: Gary Kovall. I'm legal  
11 counsel to the tribal government as well as the  
12 Twentynine Palms Gaming Commission. And we have  
13 looked at the Class II standards. And as the  
14 chairman has said, we currently do not either  
15 utilize or anticipate utilizing Class II.

16       But as the Commission may know, the tribe  
17 has a second reservation, actually its first  
18 reservation, near the city of Twentynine Palms,  
19 Joshua Tree National Park. Under the compact, we  
20 have an entitlement to build a second gaming

21 facility there. The tribe has made no such  
22 decision. As a matter of fact, we're currently  
23 looking at an alternative diversification investment  
24 up there for the use of the property.

25 But given the tribe's reluctance at the

1 present time to negotiate any re-opener of the  
2 compact with the State of California, it's unlikely.  
3 If we should pursue a second casino, the Class II  
4 issue would probably become more important to us.  
5 Nevertheless, we have looked at it and we may  
6 provide some written comments as this matter moves  
7 along.

8 But we actually had a couple other issues  
9 the tribe wanted to discuss with the Commission.  
10 Recognizing that we'll perhaps take it easy on the  
11 court reporter because the issues don't involve the  
12 Class II proposals.

13 But I do have a question about the  
14 legislation, the Johnson Act amendments that seem to  
15 have been reintroduced. Is that right?

16 MR. VALANDRA: They've been transmitted to  
17 Congress.

18 MR. KOVALL: They've been transmitted to  
19 Congress. By the DOJ?

20 MR. VALANDRA: Yes.

21 MR. KOVALL: Do they have a sponsor?

22 MR. VALANDRA: Yes.

23 MR. KOVALL: What do you anticipate

24 happening?

25 CHAIRMAN HOGEN: Here's what I think about

1 that. I think they started too late in this  
2 Congressional session. And as most Washington  
3 observers know, Congress is scrambling to wind up  
4 their affairs so they can go run for re-election,  
5 and I don't think any legislation of this nature  
6 that just gets introduced or considered now is going  
7 to get on their calendar for hearings and so forth.  
8 So I don't expect a real strong push by the  
9 Department of Justice to get this introduced or  
10 enacted this year.

11 Now, I don't have any insight or inside  
12 information to tell me that. It's just my general  
13 impression from the timing and so forth. But they  
14 are committed to addressing this issue that exists  
15 because the Johnson Act, for which they are  
16 responsible for enforcement, prohibits gambling  
17 devices in Indian country, and there's no exception  
18 there for these technologic aids that IGRA says that  
19 the tribes may use without a compact in Indian  
20 country.

21           So we're hopeful that eventually that gets  
22 enacted, and we are supportive of that. And it  
23 would dovetail with the task we're about here.  
24           MR. KOVALL: It pretty much defers or there  
25 are conflicts deferring back to the NIGC to develop



1 the standards that would then be permissible and not  
2 be subject to those devices that would not be  
3 subject to the Johnson Act. Is that correct?

4 CHAIRMAN HOGEN: That's correct.

5 MR. KOVALL: Well, having said that, I  
6 think the -- probably the thing that caught the  
7 tribe's interest and maybe -- if we need to go off  
8 the record, I want to switch gears, if we could.

9 CHAIRMAN HOGEN: Well, let's run the  
10 classification discussion to a conclusion then. But  
11 let me say, before we conclude it, a couple of  
12 things.

13 What we're trying to do, hopefully, will  
14 accommodate tribes in your situation. You're  
15 looking at the future, where you might be making a  
16 significant investment in Class II equipment. And  
17 if do you that, you want to know it's a good  
18 investment and somebody's not going to tell you  
19 tomorrow, say, "That's not going to work anymore,  
20 get rid of it."

21       And the only way I think that can and will  
22 happen is if we have a set of definitions, probably  
23 tested by some court cases, that actually describe  
24 what you can and what you can't use.  
25       And so in that regard, if the time comes

1 before these regulations are done and you're ready  
2 to make an investment in equipment, be cautious.  
3 Don't put equipment on that floor that is going to  
4 get your players so trained that all they're used to  
5 doing is Class III, because they won't like games  
6 that might require more interaction. And that will  
7 be a disappointment to them and may have a negative  
8 market impact.

9       We don't want to, you know, slow games down  
10 for the sake of slowing them down, but we do want to  
11 preserve that recognizable distinction between  
12 Class II and Class III. That is the Indian Gaming  
13 Regulatory Act intent.

14       So, having said that, we'll conclude the  
15 classification discussion and, for these other  
16 matters, we'll be off the record.

17       (End of Twentynine Palms Band of Mission  
18       Indians discussion.)

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1 RINCON BAND OF SAN LUISEÑO INDIANS

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3 CHAIRMAN HOGEN: Good morning and welcome.

4 I'm Phil Hogen, chairman of the National Indian

5 Gaming Commission, here together with Associate

6 Commissioner Chuck Choney.

7 We have a lot of the NIGC team here that

8 helped with this process: Acting General Counsel

9 Penny Coleman is seated here on my left. And from

10 her office are attorneys John Hay and Michael Gross,

11 down here, seated with Eric Schalansky at the end,

12 who is our regional director from Sacramento and I

13 know you know. Alan Phillips is also from the

14 Sacramento office. And Joe Valandra is our Chief of

15 Staff from the Washington, D.C. office.

16 We're convened pursuant to the proposed

17 regulations the NIGC published in the Federal

18 Register on the 25th of May of this year, focusing

19 on the definitions that are used and some proposed

20 classification standards that relate to

21 distinguishing the equipment the tribes can use for  
22 uncompacted Class II gaming as opposed to the  
23 equipment that might be used for Class III compact  
24 gaming.  
25       So we are eager to hear what the Rincon

1 Band has to comment with respect to our proposal.  
2 And to assist the court reporter, perhaps we could  
3 begin by each of you introducing yourselves or being  
4 introduced and describe the relationship to the  
5 tribe or the tribal gaming operation.

6 MR. CURRIER: Okay. I'm John Currier,  
7 tribal chairman of the Rincon Band. Off to my right  
8 is Roger Leydecker. He'll tell you his title.

9 MR. LEYDECKER: Vice president of finance  
10 of the casino.

11 MR. CURRIER: This is Judy Shapiro.

12 MR. CROWELL: Scott Crowell, legal counsel  
13 to the Tribe.

14 MR. HART: Steve Hart, legal counsel to the  
15 Tribe.

16 MR. GOODELL: Andrew Goodell, Gaming  
17 Commissioner.

18 MS. BURTON: Lauri Burton, Gaming  
19 Commissioner.

20 MR. CURRIER: I'll go ahead and start, and

21 then I'll weigh in after. Is that okay?

22       Okay. I'm going to go, hopefully, to some  
23 of the heart from the tribal standpoint. Basically,  
24 as a tribe, we're always going to try to defend our  
25 interests and our rights as far as we can go to the



1 intent of IGRA in that anything that the NIGC could  
2 do or states or anybody else that could have a  
3 detrimental effect to the tribe and our viability  
4 would be, you know, devastating to our membership.

5 Our goal is always to serve our members and  
6 to maximize the benefits as far as we can. And  
7 every time the NIGC or any other body attempts to  
8 take a regulation or rule or something and bend it  
9 to have an effect after we've spent, in our case,  
10 over \$300 million to try to be viable in a very  
11 disadvantaged location would be very hurtful for our  
12 tribe.

13 It's very difficult to go out and invest  
14 after years of being locked out of the game. With  
15 greater gaming, other tribes have been able to get  
16 substantially ahead of us, being able to cash in on  
17 times when investments were low, competition was  
18 very few, and able to go out there for a long period  
19 of time and gain wealth and develop their product  
20 and develop the market against tribes who later on

21 came on to get compacts in 1999. And so Rincon's  
22 band as well as tribes -- tribes will be just like  
23 Rincon was in years to come.  
24 Class II becomes another way for our band  
25 to maximize our potential after all the

1 disadvantages that have happened over the years.  
2 San Diego was very unique; certain other places in  
3 California would be very unique. But San Diego was  
4 very unique because three tribes were allowed to  
5 operate gaming machines since 1981 and other tribes  
6 to the north of us in Riverside County were able to  
7 operate gaming machines from 1995. And then the  
8 Rincon Band really wasn't able to get into gaming  
9 until after getting a compact and voter approval in  
10 California in 2001.

11       That period created a great economic  
12 disadvantage, a great disadvantage to attempt to  
13 obtain and grow our market in the future, especially  
14 in locations. Now, we don't ask the NIGC or anybody  
15 else to try to do anything to create hate,  
16 relocating from one place to another to bring an  
17 advantage to location. But what we do do is hope  
18 that you won't make it any more difficult for us to  
19 do business and be viable in the locations where we  
20 are disadvantaged, particularly with the history in

21 California, in our case, Rincon and San Diego.

22 Class II gaming gives the tribe another

23 option and another opportunity to bring the -- be

24 the primary beneficiary of the -- of the -- of the

25 type of gaming which the Indian Gaming Regulatory

1 Act said its intent was. And if the NIGC goes and  
2 starts restricting and making rules that make it  
3 more difficult to be viable, then you've put not  
4 only a disadvantage to us as to where we are, but  
5 particularly during a time when the tribes and the  
6 states, particularly in California, are in a -- in a  
7 negotiation or trying to get a negotiation.

8 And what you do today could bring a huge  
9 disadvantage for years for tribes if this regulation  
10 has an effect that takes away a right that the tribe  
11 has, first of all, but then gives even more leverage  
12 to the states in California.

13 I talked about this a little bit last time  
14 we were here, but Rincon is a tribe that is a  
15 post-1999 compact tribe that has 1600 machines. And  
16 for those 1600 machines we paid \$1,335,000 for 1600.  
17 That's the value of the deal that Rincon and Grey  
18 Davis, the governor at that time, made with the  
19 Rincon Band. In a sense, the deal was shoved down  
20 our throats, but it's the deal that we were able to

21 swallow and be successful at.

22       There's also another 400 machines that

23 we're entitled to legally and should have today that

24 the -- in California, the State has created an

25 arbitrary cap on machines that is making it unfair

1 between tribes like Rincon and other tribes in the  
2 pre-1999 compacts that were able to go ahead and  
3 implement their 2,000 machines with one-year  
4 deadlines that were detrimental to our tribe.

5 With anything that you do in Class II, you  
6 further repeat the history of disadvantage that  
7 happened during Grey Area Gaming that happened by a  
8 compact that had provisions in it that were onerous  
9 and in a situation now where a new governor has  
10 unfairly went out and said that tribes don't pay  
11 their fair share, when in fact they do.

12 The Rincon Band has dealt with every aspect  
13 from EPA. We have a management agreement with  
14 Harrah's. We've done the process that -- every  
15 aspect of the process that we're supposed to with  
16 NIGC, having an agreement with Harrah's.

17 Now with the crucial time in California,  
18 where tribes have different -- the same compacts  
19 that are applied differently to different tribes, we  
20 need to maximize our leverage in negotiations all we

21 can. And so if the NIGC takes a position to make  
22 these machines by them creating a definition, not so  
23 much backed by law but backed by an opinion or a  
24 feel of how they think they should operate that  
25 makes it more difficult for these machines to be



1 viable, then you're totally creating a problem for  
2 tribes like Rincon and other tribes, not only in  
3 California, but throughout the United States.

4       The legislative history says a tribe should  
5 have the maximum flexibility in the use of the  
6 technology. And "maximum flexibility" means to  
7 the -- it's kind of like the furthest extent  
8 feasible in Indian preference. We say it, but we  
9 don't do it.

10       So I think the question is to the NIGC, are  
11 you following the maximum flexibility, or are you  
12 restricting that flexibility? And it sounds like  
13 you're going the direction to try to restrict. To  
14 me, it seems like it's politics, and politics of  
15 maybe a justice system that wants something to be  
16 different and wants the NIGC to be the ones that  
17 come and carry that out to the detriment of tribes.

18       And, you know, it's difficult because a lot  
19 of times we come to these meetings, we basically  
20 feel that they're ceremonial. You know, we have a

21 half hour to make an impact. We're kind of like  
22 cattle. We're in here, some other tribe will be in  
23 here. A lot of times I think we say the same thing.  
24 But, you know, what would make it feel  
25 different is if you go back and take these comments

1 and you look at them and you look at that reality,  
2 and then you go back and say, "Is there another way  
3 to approach this not to the detriment of the  
4 tribes?"

5 And again, you know, Rincon's one. There  
6 will be more tribes. There's other tribes that are  
7 not even into gaming yet today, and they don't even  
8 know what their economic viability is, and they're  
9 going to be forced into, potentially, compacts or  
10 bad compacts because, again, you're helping to take  
11 leverage away -- when I say "leverage away," you're  
12 actually giving additional bad leverage to the  
13 State. The State has used what -- an intent back in  
14 1988 was to give a state a right to take care of  
15 mitigation and regulation and those kinds of issues  
16 to protect the off-reservation impacts around the  
17 communities where the gaming was going to be done,  
18 and turned it into a way to tax tribes.

19 So by doing bad provisions or bad  
20 interpretation of law, we're creating restrictive

21 regulation beyond what you need to be without giving  
22 the maximum flexibility to the favor of tribes.  
23 You're bringing more leverage to the State. I could  
24 go on and on about that, but I hope you will  
25 consider these comments. I'm not the technical guru

1 on this stuff, but we do know that, you know, tribes  
2 are out there doing the best they can to comply with  
3 all laws and keep their -- their economic interests  
4 viable.

5 And anyways, I hope that if it's not my  
6 message, that somebody walks in this door and makes  
7 an effect on you, because there's another way. And  
8 if this, you know, judicial system that's asking you  
9 guys or, you know, hoping to, trying to push strings  
10 to get you guys to go in this direction, you know,  
11 to the detriment of the tribes, it's the wrong way  
12 to go. And, you know, I know that these positions  
13 are kind of pointed and political and stuff, but,  
14 you know, there's also the right thing to do. And  
15 the right thing to do is to follow what the long  
16 legislative history of what the law says.

17 And I'll let these guys explain.

18 MR. CROWELL: Let me take a second to kind  
19 of lay the context of our legal landscape, and then  
20 I'd like to turn it over to Roger Leydecker in terms

21 of the actual economics of the impact that this

22 current situation has on it.

23 As John indicated, we're governed by the

24 1999 compact. We're at 1600 machines. The compact,

25 theoretically -- we, we don't know theoretically.

1 The compact contractually gives us the right to go  
2 to 2,000 machines, but we have to pull another 400  
3 machines out of the statewide pool. The State says  
4 the statewide pool is empty. We think that that  
5 isn't just kind of wrong, it's dead wrong, and that  
6 that's no legal theory that they can put forward to  
7 defend it. So we sued the State. We pursued the --  
8 we pursued the dispute resolution provisions under  
9 the compact. We went through the meet and confer,  
10 got nowhere. We offered to go into binding  
11 arbitration, which is an expressly stated provision  
12 in the compact and both the State and the tribe  
13 consent, and they refused.

14 And so we sued. And the State's response  
15 to our suit was to raise the Rule 19, saying that  
16 because -- because the other compacts have a  
17 provision that also determines what the number in  
18 the statewide pool is, this lawsuit needs to be  
19 dismissed because they're necessary and  
20 indispensable parties, and you can't sue them

21 because of their tribal immunity from suit.

22 We're currently up on the 9th Circuit on

23 appeal of that issue. The State has raised the same

24 defense successfully in a lawsuit brought by the

25 Colousa Tribe and has raised the defense. And it's



1 currently in its infant or early stages in a lawsuit

2 brought by the San Pasqual Tribe.

3 So, one, we can't get them by -- by

4 pursuing our rights under the compact. Then it's

5 "Well, okay, can we pursue them by negotiating an

6 amendment to the compact?" And this governor says,

7 "Well, currently, you're paying \$1,300,000 for what

8 you're" --

9 MR. CURRIER: \$1,335,000 for 1600 machines.

10 MR. CROWELL: For what you have now.

11 "So if you pay us 15 percent of your net

12 revenue for what you have now and continue to pay us

13 15 percent for any future growth, including the next

14 400 machines, then -- and some other provisions that

15 are non-economic in nature, then you can have your

16 additional machines," the additional machines that

17 we believe we're entitled to under the compact.

18 So we're in a very -- we're in a very tough

19 spot, and it's an outrageous spot because we can't

20 get this governor to work and even to honor the

21 commitments the State made to the tribes in this  
22 1999 compact. And that's a real, real problem.  
23 And so the question is, is, "What do we  
24 do?" You know, we're suing, but we've lost on this  
25 particular issue. The judge did reinstate our bad

1 faith case at the District Court level and we're  
2 moving forward with that. And we're also trying to  
3 work with this governor.

4 And he'll tell you, "Oh, absolutely we'll  
5 honor the 1999 compacts," but those words are  
6 meaningless. They won't go into binding  
7 arbitration. They won't look at even their own  
8 legal counsel's interpretation of the numbers that  
9 are available in the pool and honor what that is, so  
10 we have to look to other alternatives.

11 We've added, I believe, 100 Class II  
12 machines that, you know, provide some improvement to  
13 our bottom line and some message to the State that,  
14 you know, we're going to move forward without you in  
15 the context of Class II. If you take away that  
16 economic viability, what little leverage we've tried  
17 to eke out of the Class II, you know, goes away.

18 And I'd like Roger so take a couple of  
19 minutes to tell you about the economics of how these  
20 Class II games have been playing vis-a-vis

21 Class III. And our concern is, also, it's already a  
22 money -- you know, the money's not there with the  
23 current rules, but some money is there. Taking away  
24 any money is just going to take what little leverage  
25 we have right out the door.

1       MR. CURRIER: Before Roger does it, can I  
2 just add another -- I think it's the most crucial  
3 facts, that I forgot earlier.

4       The State, in negotiation, wants to apply  
5 15 percent retroactive to the 1600 machines, which  
6 is well over \$20 million, compared to \$1,335,000.  
7 You go make a deal, do a deal with the State of  
8 California, you have it reopen five years later, and  
9 you're supposed to look at what's the value of the  
10 deal you have, like two houses. One may be worth a  
11 little bit more than the other, right? Trying to  
12 make a deal.

13       This guy says in order to make a swap,  
14 you've got a bigger house; I've got a smaller house.  
15 I'm offering you a house plus something else, give  
16 the bigger house. The State is offering nothing.  
17 The State tries to bring this illusionary deal about  
18 exclusivity in California, where there's over  
19 50-something tribes gaming.

20       And down the area where Rincon is at,

21 there's -- I think there's eight tribes gaming  
22 today. We have the most density of machines in any  
23 area throughout California. Anywhere in Indian  
24 gaming in California, particularly -- probably even  
25 in the United States, we have the most concentrated

1 area of machines. We have San Pasqual with roughly  
2 1600 devices; Rincon 1600; Pauma with 1,050, which  
3 is probably going to go to 2,000 with the  
4 availability to go beyond that; Pala with 2,000,  
5 2250 with the availability to go beyond that; and  
6 Pechanga, 2,000 plus 1400 machines.

7       And so being economically viable again, not  
8 asking the NIGC to do anything about the economics  
9 of the competition, our reservation is where it's  
10 at. But when you bring leverage to the State of  
11 California to put a tribe like Rincon, who is at the  
12 end of the food chain, who spends a lot more money  
13 on marketing and other costs than the other tribes  
14 when we are trying to compete and asking us to give  
15 the State \$20 million for the next 20 years or so,  
16 \$400 million when they haven't invested anything,  
17 that's the detriment of these kind of things.

18       By giving the State additional leverage,  
19 quantified, it's huge. It's astronomical. And the  
20 State at that time, so far, had absolutely no give.

21 They not only wanted 15 percent on the old machines,  
22 where a deal was supposed to be a deal -- remember  
23 the treaties that they violated over the years?  
24 -- and then you have the next 400 machines, which is  
25 supposed to be the next part of the quantified part



1 of the deal, and then 2,000-plus.

2 Well, we can talk 2,000-plus. The State  
3 can say, "The old deal was 20 years, it was 2,000  
4 machines, it was \$3,075,000 total for those  
5 machines, and you can make all this money with that  
6 deal. Let's talk over here, and what else can we  
7 offer you and what else can you offer us for  
8 2,000-plus?"

9 And that's where the negotiation is. But  
10 it's not only Rincon. And there's tribes today that  
11 have never opened that, if these kind of situations  
12 continue and Class II is done in a way that can make  
13 it even more difficult, then those tribes trying to  
14 get into gaming today -- and again, you know, there  
15 is rich tribes out there, but there's a hell of a  
16 lot of poor tribes out there too. And those tribes  
17 deserve a fair shake to get a fair opportunity in  
18 the negotiations. And any policy and any regulation  
19 that would be created to make it difficult for  
20 them -- it's not just a problem for Rincon, but it's

21 a problem for them.

22        So I just wanted to add that because we're

23 not talking about a little bit of fees. We're

24 talking \$20 million a year just to talk about

25 getting the next 400 machines that we're already

1 supposed to have. That's the kind of things that's  
2 happening in California, and it's completely wrong.

3 Rog, go ahead.

4 MR. LEYDECKER: Sure.

5 As it has been stated, our hands are  
6 effectively tied at 1600 Class III machines. So  
7 following a lot of diligence and working with  
8 various regulators, IGT is a vendor we were able to  
9 go ahead and, at the end of May, put in 100 IGT  
10 Class II machines.

11 Again, given the relatively short time  
12 they've been in operation, it's difficult to really  
13 see the contribution. But in June they're probably  
14 contributing about 17, 18,000 a day, gross, to the  
15 casino.

16 So as Scott indicated, you know, another  
17 opportunity to contribute to the operation of the  
18 casino. And, again, that's a gross number.  
19 Certainly, that doesn't take into consideration the  
20 cost of the machines or the repairs of the machine

21 or the labor with respect to that. So again, a  
22 nominal opportunity. And, again, admittedly, that's  
23 not a gross contribution as well, because there's  
24 been some shift or cannibalization from the existing  
25 1600 machines. So, again, it's tough to go ahead

1 and quantify what it really is. But about 17,  
2 18,000 a day, because we were seeing a gross  
3 contribution from those machines.

4 And that probably represents about a 30 to  
5 40 percent comparison of what the Class III machines  
6 contribute to the facility. So essentially, the  
7 economic contribution of those machines that we've  
8 realized to date.

9 CHAIRMAN HOGEN: Thank you.

10 MR. CROWELL: So with that, you know, if  
11 you assume little cannibalization, you know, we're  
12 already making a few -- already lost a huge  
13 opportunity cost with the current IGT machines, that  
14 we make 30 percent of what a Class III machine will  
15 make on that floor. But with that 30 percent, we're  
16 able to get some leverage with the State in that we  
17 can say, you know, yes, we can walk away. You know,  
18 we have other options in terms of trying to provide  
19 for our customers without, you know, giving in to  
20 this governor's blatant overreaching at the

21 negotiation table.

22       And John's figures are correct. I mean,

23 this is not an over-exaggeration. He is asking us

24 to pay \$20 million for what we currently pay a

25 million dollars to have. It's just outrageous.

1       The cutting down from that 30 percent is  
2 what the effect of this regulation is going to do.  
3 It's going to make the game even less viable and  
4 less friendly and wipe out whatever little leverage  
5 we're able to get out of it.

6       MS. SHAPIRO: If I can, the first thing  
7 that would happen, given the machines that are on  
8 the floor, is you would cut the game cycle or you'd  
9 double the length of the game cycle from what it is,  
10 which is already pretty long, into your 8 to 10  
11 seconds. Which means that going from 30 to  
12 40 percent of a Class III game, it's probably going  
13 to cut it down to more like 10 to 15 percent.

14       We also are going to have to do some major  
15 replacement, because while some of the appearance  
16 criteria are met in this game, in that you do have a  
17 massive amount of display devoted to bingo, you  
18 still don't have those wonderful two-inch high  
19 letters -- labels that would have to be put back on,  
20 you still don't have the two-second delays, you

21 don't have any of the other incidental changes that  
22 have been put in in this draft version of the reg.  
23 And so at the very least, you would have to replace  
24 those, you would have to make them less profitable  
25 and probably less playable to the extent that the



1 players who have a Class III alternative are going

2 to find them much less worth their time.

3 It's already marginal whether a Class III

4 player is going to be attracted to a Class II

5 machine, and the more that you hobble those, the

6 less that this is going to be a opportunity for

7 Rincon to expand its player capacity.

8 MS. COLEMAN: The machines. How many did

9 you say you have of the Class II machines?

10 MS. SHAPIRO: 100.

11 MS. COLEMAN: Are those the one-, two-, or

12 three-touch machines?

13 MS. SHAPIRO: Three.

14 MS. COLEMAN: Three-touch. And they take

15 about how long to play?

16 MR. LEYDECKER: Too long.

17 MS. COLEMAN: I understand, but is it like

18 a second or four seconds?

19 MS. SHAPIRO: I don't think that they've

20 had them in long enough. But from what I know of a

21 100-bank game, and I don't think they're linked to  
22 anyone else, there's going to be a delay in startup  
23 time. It's not going to play as fast.

24 MR. LEYDECKER: With respect to your  
25 comment, anecdotally from our slot operations

1 department, they see one of the negative impacts of  
2 those machines is the slowness of play, and that's  
3 contributing to the lower performance overall  
4 compared to the Class III. Again, that's anecdotal  
5 from observing the customers play.

6 CHAIRMAN HOGEN: These are similar to the  
7 machines at the Lytton facility; is that correct?

8 MS. SHAPIRO: They are. But they're not  
9 going to play as fast because of the concentration  
10 of games at Lytton allows the games to play faster.  
11 You have players that are more educated at Lytton or  
12 have more incentive to become educated up at Lytton.  
13 I suspect that there's probably a way to get back to  
14 you the information about the game cycle at this  
15 location, which is going to have different  
16 statistics from the --

17 MS. COLEMAN: That would be helpful.

18 MS. SHAPIRO: I can do that.

19 MR. CURRIER: Another thing going on with  
20 leverage and compacts is the State's not only trying

21 to do that to get money, they're also trying to do  
22 that to create harder environmental standards for  
23 the tribe.

24       So the leverage is going beyond just even  
25 economics from a standpoint. And then that leverage

1 would create more leverage for your local counties  
2 to put burdens on you.

3       Yeah, there's some bad examples of tribes  
4 who maybe didn't do the right thing, but there's  
5 some great examples, like Rincon's example. We got  
6 through two NIGC processes, over \$300 million of  
7 development. We have a sewage treatment plant. We  
8 have 653 rooms, the most rooms anywhere in  
9 California.

10       So, you know, what the State is trying to  
11 do now is they're trying to look at some examples.  
12 But there's a lot of examples, too, where the local  
13 communities have been hostile with tribes and  
14 prevented them from doing things. And so if you --  
15 if you give the State more leverage, then they apply  
16 the leverage to try to get things on the  
17 environmental side, which is what they're trying to  
18 do also, and then it's going way beyond. Because  
19 you're not only talking about the economic viability  
20 of the machines, you're talking about being able to

21 hold the tribes up from development or, again, be  
22 extorted by, now, local communities to get their  
23 way -- it's usually all about money. You know, when  
24 we get enough money you pay us, and then we'll let  
25 you develop.

1           And the problem with that that it creates,  
2 here again, we have another tribe over here who is  
3 by the freeway who can afford to pay a bunch of  
4 money and just move on. Here you are at the end of  
5 the food chain, you can't. What do they do? The  
6 one by the freeway, they pay the money, they  
7 develop, they out-develop you. You can't afford to  
8 do so. They keep you there, they restrict you. And  
9 so your economic viability becomes even worse.

10          I would like to talk to you, as a separate  
11 issue, back to the -- on the management agreement  
12 issue, and I can bring that up -- that will be off  
13 record. I'll come back to that off record. I just  
14 want to remember to bring that up again.

15          Another thing I just want to talk about is  
16 when you look at machines and the viability in peak  
17 period, okay, what's good about Class II machines  
18 for tribes is Rincon's peak period, I'm giving a  
19 guess, but probably Monday through Thursday --  
20 probably to Friday at 5 o'clock, maybe 8 o'clock is

21 not going to be our peak period. So our peak period  
22 is going to kick in, on a real good Friday if we're  
23 lucky, probably 8 o'clock to 2 or 3 in the morning.  
24 That's the time when those extra machines can make  
25 money, whether it's Class II or Class III. I mean,



1 Saturday at some point in time, whether it be 10 or  
2 12 noon or so and maybe, again, up to 2 or 3. And  
3 it's not always peak the whole time, but there's  
4 those peak periods in there. And then Sunday from  
5 maybe 12 in the afternoon to maybe 5 or 8 p.m. on  
6 Sunday, you're going to get your peak periods.

7       What the problem is, the State looks at  
8 everything as you have these peak periods all week  
9 long. It's not true. So when they're coming back  
10 and trying to get the fees they are, they're cutting  
11 from the cream of the crop. They're cutting when  
12 you bring these machines in, and they're taking a  
13 majority of the money or you're having a retroactive  
14 tax cutting back on the money you're already making.  
15 There we go with power.

16       So we want to keep other casinos with  
17 lights on, but that's -- that's the other thing.  
18 Those leverages that they're using, when you're  
19 looking at your next group of machines, whether it  
20 about be 100 or 200 or 400 or whatever, those

21 machines are kind of for that peak period. They're

22 not for the basic casino.

23       So the State is trying to use the leverages

24 that they have and trying to gain against you on

25 just any kind of growth and taking a majority. And

1 so when you go back to IGRA and you look at the  
2 primary beneficiary of your gaming -- well, right  
3 now we're the primary beneficiary of our gaming,  
4 and -- but if we do the State's compact, they become  
5 much more significantly beneficiary of the gaming  
6 and of the new added value. They become the primary  
7 beneficiary of the new added value.

8 We also have a deal with the Harrah's  
9 Management Company. If the fees cost us more, then  
10 the viability for Harrah's to make a profit changes.  
11 Therefore, when their term is up, for them to want  
12 to continue to do business with Rincon might not be  
13 as viable.

14 The second thing that can happen, if it is  
15 viable, in the negotiations now we have a problem  
16 with Harrah's because their cut has been taken. So  
17 they're going to negotiate a harder bargain. So  
18 tribes like Rincon will get hit in many different  
19 areas every time that you take any kind of option  
20 away from the tribes, that gives the State more

21 leverage in compact negotiations.

22 MS. SHAPIRO: And for the context, the only

23 time that a Class II game is going to be used in

24 Rincon is during that peak period. So if you've got

25 1600 Class III machines in use and you've got one to

1 two or 300 Class II games there and the players  
2 don't like it, what they're going to do is they're  
3 going to leave and not come back. And they will  
4 have lost anything above that 1600 peak and probably  
5 somewhat in cutting into their normal business  
6 because people are dissatisfied and they don't come  
7 back at all.

8 CHAIRMAN HOGEN: Okay. Well, we're in --  
9 getting near the end of the time here allowed for  
10 the consultation period. We will very seriously  
11 take into consideration your circumstances here in  
12 California and circumstances of those 1999-and-after  
13 tribes and try to do the right thing.

14 I know that when involved in negotiations,  
15 sometimes certainty with respect to some things is a  
16 good thing. Sometimes, I suppose, it's a bad thing.  
17 We, as a Federal commission, having a mandate and a  
18 statute, among other things, to write standards,  
19 probably don't have the luxury of not stepping up to  
20 the plate when it appears that a regulation is

21 appropriate. That's why we're involved in this  
22 exercise. We will be mindful of where this will  
23 leave the tribes as we try to do the right thing,  
24 so --

25 MR. CROWELL: We will provide written

1 comments, and we'll try to have the technical data  
2 that Penny has asked for before we submit those  
3 comments.

4 We don't ask you to go outside what you're  
5 required to do under the Act. We believe that you  
6 have, you know, discretionary authority within that  
7 Act to provide for a game that's more viable than  
8 that's reflected in the regulations.

9 CHAIRMAN HOGEN: Thank you. We'll  
10 conclude, then, our discussion regarding the  
11 classification standard.

12 (End of Rincon Band of San Luiseno  
13 Indian Tribe discussion.)

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1       MECHOOPDA INDIAN TRIBE OF CHICO RANCHERIA

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3           CHAIRMAN HOGEN: We will go on the record.

4           Good morning. Welcome. I'm Phil Hogen,

5 chairman of the National Indian Gaming Commission,

6 here together with Associate Commissioner Chuck

7 Choney. We are the Commission these days. And with

8 us, Joe Valandra is our chief of staff in the

9 Washington office, as well as Michael Gross and John

10 Hay there at the end, the attorneys from the office

11 of general counsel. Between them is Alan Phillips,

12 who is with our Sacramento office. And our regional

13 director here in Sacramento is Eric Schalansky. And

14 Natalie Hemlock is an assistant to the Commission,

15 who is here helping us with this.

16           We published in the Federal Register on the

17 25th of May, some proposed regulations relating to

18 definitions and classification of gaming devices.

19 We have those under consideration. We are

20 consulting with tribes with respect to their views

21 on this proposal and, hopefully, once we have heard

22 what tribes had to say, perhaps hold a public

23 hearing.

24       We think probably in the not too distant

25 future we'll finalize plans regarding a public

1 hearing as well as the publication next week of our  
2 technical standards and an opportunity for tribes to  
3 comment on those. Hopefully, we can conclude this  
4 regulatory process, publish final regulations, if we  
5 decide that's what we want to do, this fall.

6       So having said that, would you please  
7 introduce yourselves and tell us how you are  
8 affiliated with the tribe. And I know that you  
9 folks are on your way to getting to that point, but  
10 we're interested in your views.

11       MS. ROSE: Okay. I'm Barbara Rose, and I'm  
12 vice chair of the Mechoopda Tribe in Chico,  
13 California.

14       Let me switch to my reading glasses. I  
15 have -- I'd like to -- Steve Santos, our  
16 chairperson, also sends his apologies that he could  
17 not be here today.

18       I've kind of stepped up, and I've been more  
19 active with tribal meetings and things. I've met  
20 you and John, so I think you're beginning to see me

21 around a little bit more often.

22 But I've been vice chair of the tribe now

23 for approximately eight years, so I'm pretty much

24 involved and know everything that's going on with --

25 with Indian gaming and getting land into trusts,

1 so -- and I just wanted to just go over some things,  
2 just a brief history of our tribe. I know that  
3 you -- I don't know if you remember or some of you  
4 aren't familiar with the Mechoopda Tribe that's in  
5 Northern California.

6 Prior to our termination, our reservation  
7 was located in Chico, downtown Chico. Right now the  
8 Chico State College is on our previous Rancheria.  
9 Right now we're a landless tribe, but we are looking  
10 for property that's approximately 10 miles out of  
11 Chico to -- a venture to go into gaming. We have  
12 completed our environmental assessment and right now  
13 it is in public comment. The public comment should  
14 end, I think, August 1st. And then the extended one  
15 is -- it's been extended to August 11th, and that  
16 will be the final EA.

17 But right now the tribe is concerned about  
18 the regulations for the, um -- because of our --  
19 because if we want to go into gaming and that the --  
20 the new proposed regulations for the Class II also

21 would affect us. So we do have a concern about it,  
22 even though we're not a gaming tribe at this point.

23       So I guess that our tribe is opposed to the  
24 proposed regulations, and we just wanted to have  
25 that on record also.

1           And so then I'll introduce Mike Anderson.

2           MR. ANDERSON: For the record, Michael  
3 Anderson, Monteau and Peebles, and we're counsel to  
4 the Mechoopda Tribe.

5           MS. KAZHE: Christina Kazhe, also counsel  
6 to the Mechoopda tribe.

7           MR. ANDERSON: Just to follow up on the  
8 vice chair's opening, we do have a statement for the  
9 record, as well.

10          Mr. Chairman, you mentioned that there's  
11 consideration that there might be an extension of  
12 the comment period. Do you know when that decision  
13 is going to be made, and would it be a 30-day or a  
14 60-day or a 90-day? When do you think the comment  
15 period --

16          CHAIRMAN HOGEN: I'm thinking probably  
17 early September, so I don't know if it would be a  
18 full 30-day extension, but it would be likely an  
19 extension of the August 23rd date that we have now.  
20 And it would probably -- its timing would be

21 influenced by the comment period we allocate for the  
22 technical standards and probably, also, the  
23 scheduling of any public hearing.

24 MR. ANDERSON: Okay. And then this  
25 potential global tribal leader consultation, would



1 that be within that time frame, then, if that's  
2 agreed that that will happen, the generic session?

3 CHAIRMAN HOGEN: In terms of --

4 MR. ANDERSON: If you agree to do that.

5 CHAIRMAN HOGEN: I guess that's what I'm  
6 calling a public hearing. Yes, that would likely be  
7 within that time frame.

8 MR. ANDERSON: And that wouldn't be an  
9 individual, but that would be one where all tribal  
10 attendees would be there?

11 CHAIRMAN HOGEN: It would not replicate the  
12 kinds of consultations we're doing here this week  
13 and those that we did in Tacoma earlier this week.  
14 Rather, it would be a public forum. And we're still  
15 working on that what format would be.

16 MR. ANDERSON: I also wanted to ask some  
17 questions about the Unfunded Mandates Reform Act and  
18 some of the determinations that the Commission made  
19 about the nonapplication of that Act.

20 As you're aware, there has been decisions

21 about meaningful consultation issued recently by  
22 district courts. The Yankton Sioux case just came  
23 out talking about meaningful information and also  
24 having information on which to base comment on. And  
25 there is a statement that -- it's a declarative

1 statement that basically says the Commission  
2 believes there's no effect on \$100 million a year on  
3 tribal governments or private sector.

4       We've seen from industry groups like NIGA  
5 and others, that they're saying the impact may be a  
6 billion dollars a year on the industry because of  
7 the slowdown in play, some of the new provisions  
8 about, you know, no -- you know, no predrawn balls,  
9 no autodaub combined with the play button,  
10 et cetera. And they are doing -- and some of our  
11 clients are also looking at what the slowdown in  
12 play would mean in terms of economic impact.

13       But it seems that if there are 50,000  
14 machines or so, that there could be, indeed, an  
15 impact more than \$100 million.

16       Could you share with us just your  
17 calculations on how this rule does not amount to  
18 more than \$100 million so the Act wouldn't apply?

19       CHAIRMAN HOGEN: Well, I think the reading  
20 of the Unfunded Mandate Act, as we view it,

21 indicates that when government does something by  
22 regulation, you need to consider what tribes will  
23 have to spend or governments will have to spend to  
24 comply with that regulation.

25 Here, there would -- would be some

1 expenses. Tribes would need to go through the  
2 certification process of devices that they wanted to  
3 use in Class II gaming, with manufacturers probably  
4 going into independent laboratories getting those  
5 devices certified. Those are the kinds of costs  
6 that, I think, that are contemplated under the  
7 Unfunded Mandate Act.

8       We don't envision, even though there are  
9 perhaps 50,000 machines out there, there are  
10 probably a much smaller number of models or types of  
11 machines. And once a model or a type is certified,  
12 then all those identical to it would be covered. So  
13 I think that the amount the tribes will spend in  
14 that connection would be much smaller than that  
15 hundred-million-dollar figure.

16       MR. ANDERSON: Your calculation didn't  
17 include transition costs, though, for tribes to  
18 conform their current games with games that would be  
19 required under the regulation?

20       CHAIRMAN HOGEN: No. I think that would be

21 beyond the scope of the Unfunded Mandate Act.

22 MR. ANDERSON: Have you all done -- we had

23 the discussion in our prior consultation about

24 gauging the economic impact to tribes. Have you all

25 given further thought to making that determination

1 and also, then, sharing those calculations with the  
2 tribal community?

3 CHAIRMAN HOGEN: Well, I don't know whether  
4 we've, in terms of sharing any information, issued  
5 any particular numbers to anyone. But, yeah, we are  
6 considering how this is going to impact tribes, and  
7 we think that it will -- it may well constitute a  
8 significant savings or protection to tribes. If  
9 there is no clarification and tribes find themselves  
10 conducting unlawful activity, it would have to be  
11 eliminated, curtailed, or maybe even result in  
12 criminal prosecution, and this clarity will be a  
13 real service to tribes in that connection.

14 MR. ANDERSON: So you see it as a savings  
15 to the tribe. There's definitely a difference of  
16 opinion on that.

17 Basically, what I'm hearing from both the  
18 industry experts and others is that certain features  
19 of the games that would be required to be changed  
20 that are currently being played, like changing the

21 displays, changing the hardware to match the  
22 displays that are required, would incur significant  
23 costs and time delays, pulling machines from the  
24 floor. And there seems to be somewhat of a  
25 disconnect, I think, between what the Commission is



1 saying in terms of cost savings and what the  
2 industry is saying and the tribes are saying, maybe,  
3 you know, a billion dollars of loss.

4 Can you reconcile those, or is that just a  
5 difference of opinion that can't be reconciled?

6 CHAIRMAN HOGEN: Well, the challenge or the  
7 problem that the industry has right now is that  
8 there is not clarity with respect to what's the  
9 distinction between a technologic aid to Class II  
10 gaming that can be conducted without a compact and  
11 facsimiles of games of chance -- electronic  
12 facsimiles of games of chance that have to have a  
13 compact?

14 And as a result of that, we have issued  
15 some advisory opinions. Those advisory opinions  
16 have said, among other things, regulations are in the  
17 works and once those become implemented, they will  
18 supersede the advisory opinions and changes may be  
19 necessary.

20 And so it's been kind of a long process

21 here to fill this real need for clarity. And  
22 undoubtedly some transition will occur, given the  
23 fact that we will be going from a period of  
24 uncertainty to a period of clarity.  
25 MR. ANDERSON: On the potential revenue

1 drop in terms of the autodaub being allowed under  
2 Class II games, our experts have said there could be  
3 a 40 to 50 percent drop, you know, based on an hour  
4 in terms of how many plays and player boredom and  
5 delays.

6 Have you all made any further calculations  
7 as to what you think the drop would be in terms of  
8 revenue or number of plays, or based on the new  
9 regs, if adopted as-is?

10 CHAIRMAN HOGEN: We continue to study that.  
11 We're currently -- I'm currently of the opinion that  
12 there is not a direct relationship between the speed  
13 of play and the amount of money that each casino  
14 customer is going to leave at the casino. I mean,  
15 we have seen dramatic changes in the speed of play.  
16 For example, the MegaMania games, which are those  
17 that were most frequently addressed by courts  
18 addressing this issue, what is or isn't a  
19 technologic aid, took a minute or more to play. The  
20 games that we have described in the regulations

21 might be played in 10 seconds or six games a minute.

22        So this would be dramatically quicker than

23 the games the courts considered, and -- but I don't

24 think that a player is going to necessarily spend

25 six times more money or lose six times more money

1 playing a game under these rules than they would  
2 have lost playing MegaMania game.

3 MR. ANDERSON: That's the kind of analysis,  
4 if there is a public hearing, that could be shared,  
5 would allow comment, and an understanding of the  
6 analysis because it wasn't clear, just from my  
7 reading of the regulations, that there was a  
8 substantive evidentiary basis for any of the  
9 economic impacts. And I think that's what people  
10 are focusing on, is it doesn't seem like the  
11 Commission is aware, or if you have an  
12 understanding, it's not been shared. And I think,  
13 based on the Yankton case, it talked about  
14 meaningful consultation, which means having the  
15 information available.

16 So we would urge, if there is a hearing,  
17 that, you know, that kind of -- more information  
18 would be the better, I think, would be the view that  
19 we would have.

20 I didn't have any other information, Vice

21 Chair.

22 Christina, if you did -- we do want to go  
23 off the record, though, on another matter that's a  
24 major concern to the tribe.

25 Madam Vice Chair, did you have any other

1 points on the terms of the hearings and what's going  
2 to happen next?

3 MS. ROSE: Huh-uh.

4 MR. ANDERSON: Would you then consult with  
5 Justice after the reg is finalized, at least for --  
6 when the comment period is ended, then, do you begin  
7 your coordination with the Department of Justice to  
8 finalize the rule?

9 CHAIRMAN HOGEN: We would welcome their  
10 views. They may well be one of the participants in  
11 the public hearing.

12 MR. ANDERSON: That would be interesting.

13 All right. Well, I think that would  
14 conclude, basically, what we wanted to put on the  
15 record, which is our written statement.

16 MS. ROSE: And I do have a written  
17 statement for you also.

18 CHAIRMAN HOGEN: Thank you.

19 All right. With that, then, we will  
20 conclude the consultation session regarding

21 classifications with Mechoopda.

22 (End of Mechoopda Indian Tribe of Chico

23 Rancheria discussion.)

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1           GUIDIVILLE RANCHERIA TRIBE

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3           CHAIRMAN HOGEN: Good afternoon. Welcome.

4           I'm Phil Hogen, chairman of the National

5 Indian Gaming Commission, here together with

6 Associate Commissioner Chuck Choney.

7           And we have staff that's assisting us with

8 this exercise, Acting General Counsel Penny Coleman;

9 Natalie Hemlock from our Washington, D.C. office.

10 Joe Valandra is our Chief of Staff; and John Hay

11 there at the end of the table and Michael Gross

12 here, next to Joe, are attorneys from the Office of

13 the General Counsel. And then Alan Phillips is in

14 our Sacramento office, as is our Regional Director

15 from Sacramento, Eric Schalansky. So that's the

16 team that is here.

17           And we published in the Federal Register on

18 the 25th of May some proposed regulations dealing

19 with the issue of how one might distinguish

20 equipment you can use to do Class II gaming that

21 doesn't require a compact from that that would have  
22 to have a compact, that is, Class III gaming.  
23       So having said that, we would invite you to  
24 introduce yourselves to us on the record here so  
25 that the court reporter knows who it is that's

1 speaking and tell us your affiliation with the  
2 tribe. We know that you folks aren't as far along  
3 into the gaming venture as some others, but we're  
4 eager to hear your concerns, given your current  
5 posture.

6 So with that, we invite you to introduce  
7 yourselves and tell us what you think.

8 MR. DERRY: Well, I'm going to speak for  
9 the tribal chairperson and the council. They sent  
10 me today to come and visit. They send their regrets  
11 that they couldn't be here today, but they sent me  
12 to do the work and brought along our fine legal team  
13 with us.

14 And so on behalf of the tribe, thanks for  
15 the consultation, and we're happy to be here.

16 THE REPORTER: I need your name, please.

17 MR. DERRY: I will. My name is Michael  
18 Derry. I'm with the Guidiville Band of Pomo  
19 Indians.

20 And I'll have the rest of the team

21 introduce themselves.

22 MR. SPIELMAN: Mr. Chairman, Commissioners,

23 Staff, my name is Andy Spielman. I'm outside

24 counsel to the Guidiville Band, with the law firm of

25 Hogan and Hartson. It's an honor to see you all

1 today.

2 MS. SHAPIRO: I'm Judy Shapiro, outside  
3 counsel here with Scott Crowell.

4 MR. CROWELL: I'm Scott Crowell, legal  
5 counsel for the tribe.

6 MR. HART: Steve Hart, legal counsel for  
7 the tribe.

8 MR. DERRY: I think what we'd like to do  
9 for the agenda is, first, talk about the proposed  
10 regulations and give you our comments. Largely Judy  
11 and Scott are going to go into that. And then we'd  
12 like to go off the record for the remaining time and  
13 talk about the proposed management agreement that we  
14 have with you and the recent letter we got back from  
15 you. And then, also, the Indian lands, the  
16 termination that's underway. And we're trying to  
17 get a status update on just where we are with all  
18 that. So that's what we'd like to do, if that's  
19 okay.

20 And so with that, I just want to say that

21 Class II gaming is a pretty important issue to the  
22 Guidiville Tribe. We have a proposal and  
23 acquisition underway. We don't know if we'll ever  
24 get a compact with the State of California, and how  
25 these issues turn out is really, really important to

1 the tribe, because our ability to conduct gaming on  
2 the parcel of land that we're chasing is -- is a  
3 source of revenue to pay for it.

4 And as you know, Guidiville is a terminated  
5 tribe. We're in the process of trying to restore  
6 our land after termination. And in California,  
7 especially Northern California, it's a complicated  
8 and very, very expensive process. So while these  
9 regulations and things are going forward, time -- we  
10 have land option payments with the City and other  
11 partners that we have to deal with all the time. So  
12 the source of repayment and the ability to pay for  
13 this land through gaming is really important.

14 So with that, I'm going to hand it over to  
15 Judy and Scott to sort of go through the regulations  
16 and comments.

17 MR. CROWELL: Thank you, Michael.

18 I think we wanted to do a very abbreviated  
19 version of our concerns with Class II. We will  
20 submit written comments before August 23rd. We

21 appreciate the time, because we have a couple of  
22 important issues that we'd like to talk to you  
23 outside the scope of Class II, due to the  
24 abbreviated version here.  
25       Although this is in the focus of just the



1 Guidiville, you've seen a lot of Judy and I the last  
2 couple of days, and you've seen us in the context  
3 of -- of tribes in different circumstances. You've  
4 seen us in the context of a tribe that has a large,  
5 successful operation; a tribe in the context of  
6 transferring from a noncompact environment to a  
7 compact environment; to the context of a tribe with  
8 a very small operation, where it's barely trying to  
9 scratch out survival and still keep an income stream  
10 from its transfer agreements in Washington state.

11 And -- and in all of those contexts, it  
12 still keeps coming out to a couple of major points:  
13 That a viable Class II game is important,  
14 particularly in the context of how it relates to  
15 that tribe's ability to secure a Class III gaming  
16 compact with the State.

17 And that's where, you know, if there's --  
18 you think that -- it looked like, you know, things  
19 falling off your radar screen. And Judy and I have  
20 been involved in the Act, I think, since its

21 inception in terms of things that looked like they  
22 were falling off the radar screen. And we know that  
23 the -- the major battleground for Class II gaming,  
24 for example, in Oklahoma, you know, went through an  
25 ocean change when the Oklahoma compacts came into

1 place.

2 But I hope that one of the things that  
3 comes out of our discussion -- our various  
4 discussions that we've had yesterday and today is  
5 that -- is no tribe is in a safe environment; that  
6 they're between the legal challenges and the  
7 political challenges that come about and the  
8 different positions that states have and the unfair  
9 leverage that states have in the negotiation  
10 process.

11 It is of the highest importance that the  
12 tribes maintain a viable option to Class III gaming.  
13 What if they can't get a compact? What if the  
14 compacts that they have are struck down? You know,  
15 I don't think any of us expected the New York  
16 Supreme Court or the Wisconsin Supreme Court, or in  
17 Oregon, where we're dealing with litigation that  
18 appeared to strike -- strike compacts down.  
19 Fortunately, in Wisconsin the Supreme Court said,  
20 "Well, we thought they were invalid, but we're

21 wrong, they were really valid," thankfully.

22       The bottom line is -- is when we look to

23 the NIGC and understand the need for clarity and

24 certainty as to what Class II games is there, that's

25 not where the criticism that we're voicing is coming

1 from. We understand that that's part of your job.  
2 It's part of something you do. And certainty helps  
3 everybody. But it's the final result -- if it's  
4 certainty that has a nonviable game, you know, then  
5 we're in trouble. If it's certainty that has a  
6 viable game, then we're better off and we've carved  
7 out some leverage against the states.

8       And our concern about the draft regulations  
9 in their form is we believe that there are a number  
10 of points in there to where you can maintain the  
11 statutory parameters that IGRA requires of Class II  
12 and yet not -- not impede the commercial viability  
13 of that game. And when we start getting into the  
14 details of the autodaub versus the non-autodaub, the  
15 aggregation of two separate -- two-second intervals  
16 regarding certain portions of the game, the  
17 50-percent display of bingo rule.

18       You start getting into those details, and  
19 they seem to -- it's our -- it's our position that  
20 those -- that those restrictions are not necessary

21 for the NIGC to ensure that the fundamental  
22 characteristics of the game being played on the  
23 machine are bingo. And that's, you know, the  
24 message that we hope we're getting through.  
25 We support you in providing clarity, but

1 please, you know, do it within -- in mind of what  
2 Judge Kocinski said in the Spokane litigation, is  
3 that there are things that you can do to send a  
4 clear message to states that you're not going to  
5 carry their water.

6 MR. HAY: If I can interrupt for one  
7 second.

8 You talked about the viability of the game.  
9 When you talk about the viability of the game, do  
10 you mean a viability of Class II to compete with  
11 Class III, or simply for Class II to sustain itself?

12 MR. CROWELL: For Class II to sustain  
13 itself. To give tribes the ability to say no to an  
14 overreaching state.

15 MS. SHAPIRO: I'd like to comment on that.

16 For tribes that have, like Guidiville, gone  
17 through the process of termination, the process of  
18 getting restored, and lost 20 to 30 to 40 years of  
19 their institutional existence, and then to crawl out  
20 the other side and be told, "Now you have to

21 establish why the land you lost when you were  
22 wronged and when that wrong was partially righted --  
23 first you have to establish why that can be yours  
24 again, and then you're going to have to go through  
25 all these other processes."



1           And then there's this compact process,  
2   which may or may not work because we know that that  
3   part of the statute is broken. And then if their  
4   only alternative -- assuming they overcome all the  
5   hurdles and they get the land in trust and they get  
6   their management contract approved and they have the  
7   right to have some limited something that the State  
8   doesn't supervise.

9           So they go to Class II, and they say,  
10  "Here's this game that we want." And they submit  
11  that game, and it goes through your independent lab  
12  process. And if the independent laboratory agrees  
13  with them that it's a Class II game but you don't  
14  agree, you have the ability to undo that  
15  determination, first in a short period and then,  
16  later on, for good cause.

17          So you have the ability to say -- to jump  
18  in at various times in that process and say, "Well,  
19  it's not final, and it's not final until I say so."

20          If the independent laboratory, which is

21 subject to relicensing every year by the NIGC,  
22 issues a decision which says, "No, the tribe has no  
23 ability to challenge it," there is no final  
24 decision, there is no due process and once again,  
25 they're at the end of a long and desperate trail.

1 And that's not fair.

2 And that's something that needs to be  
3 attended to for Guidiville and for other tribes.

4 CHAIRMAN HOGEN: Well, thank you for your  
5 comments. As usual, they are thoughtful, and we  
6 will certainly evaluate what we've written in light  
7 of the concerns you've expressed.

8 Certainly, these things are always done in  
9 some context, and perhaps what would influence the  
10 Commission's view of the world would be, "Well, can  
11 everybody get a Class III compact and does,  
12 therefore, a Class II seem not quite as important?"

13 It seems to me we need to strive to do the  
14 right thing to fulfill the intent of Congress in the  
15 Indian Gaming Regulatory Act, regardless of whether  
16 you can or can't get compacts. And certainly, you  
17 know, this is the context or the environment in  
18 which we deal with all this. There is uncertainty.  
19 But we hope that clarity will serve a useful purpose  
20 and that if we try to achieve that clarity by virtue

21 of regulations that, after we hear what tribes have  
22 to say and others, and finalize these, we'll come  
23 down in the right place and there will be a viable  
24 opportunity, and that it will be consistent with  
25 what Congress intended and what the Act and what the

1 courts have said.

2 MR. CROWELL: Phil, if I can expand on  
3 that. Where I may disagree with what you say is the  
4 right answer here may not be one where it's the  
5 right answer, regardless of whether or not the tribe  
6 can or cannot get a Class III compact. You know,  
7 it's been several years now since the 9th Circuit  
8 came down with the Spokane case, but I really  
9 suggest you go back and read it because what Judge  
10 Kocinski said, and I thought it was very well-put,  
11 was saying that, you know, that the Federal  
12 Government has to look as to what it can do in the  
13 context of an environment where IGRA is broken and  
14 the tribe can't get the remedy that -- that Congress  
15 intended.

16 And when -- when you -- you're going to  
17 have a certain amount of discretion in terms of the  
18 rule that you -- that you put together. And, you  
19 know, I think that our written comments will go into  
20 those in greater detail, but what we've talked about

21 in the last few days in terms of autodaub and number  
22 of seconds, et cetera, are areas where that can be  
23 done.

24 But because part of your charge should be,  
25 according to Judge Kocinski, is to take those

1 efforts that you can to exercise your discretion in  
2 a manner that restores the balance in the  
3 Tribal/State relationship that Congress intended,  
4 then I think it's incumbent upon NIGC, to, within  
5 the framework of the statute, provide as much  
6 viability to that game as possible.

7       And so when it comes to well, what makes  
8 more sense? Two seconds versus one second versus a  
9 half a second? An autodaub requirement or not?  
10 50 percent display versus 5 percent display? You  
11 start looking at those -- at those areas.

12       I think that it's the -- the inability of  
13 the tribes to get compacts or to get compacts that  
14 are fair, which is probably the better way to phrase  
15 it, I think it's -- I think it's part of this  
16 organization's trust responsibility to provide -- to  
17 use that discretion to the benefit of the tribes and  
18 to read it as liberally as possible in favor of the  
19 tribes so that the game that's there, yes, it falls  
20 within the statutory framework that you have, but it

21 doesn't restrict it any further than it has to.

22 MR. HART: May I, for a moment?

23 MR. CROWELL: Sure.

24 MR. HART: My background -- I'm a lawyer,

25 but my real background in gaming is as the head of a



1 regulatory agency, a State regulatory agency, and it  
2 kind of brings a little different perspective and,  
3 frankly, I think, a perspective similar to what  
4 you're talking about, Phil.

5       It's clear that regulations have to be  
6 consistent with the underlying statutes. That's  
7 just the fundamental provision, or proposition. You  
8 know, the Congress didn't authorize technical aids  
9 in order to make sure that bingo stayed slow. I  
10 mean, that just doesn't make any sense.

11       And I think that's the request that I would  
12 make on behalf of Guidiville, is that as you go  
13 through this process, allow the tribe to offer bingo  
14 at a speed that interests the players. If it needs  
15 to be bingo, it needs to be bingo. But if you're on  
16 an authorized technological aid, you're doing it to  
17 speed up the game, not to slow it down.

18       And that would be my request, is you think  
19 through this process and where the statutory  
20 authority lies.

21 CHAIRMAN HOGEN: Okay. Well, we're running  
22 out of time here. If there's nothing more to be  
23 said with respect to classification, why, we thank  
24 you for those comments and certainly will consider  
25 what's been said. We will conclude the record with

1 respect to this session, and we'll have a brief  
2 discussion here with respect to the other concerns.

3 (End of Guidiville Rancheria Tribe  
4 discussions.)

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1 PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS

2 CHAIRMAN HOGEN: I'm Phil Hogen, chairman  
3 of the National Indian Gaming Commission, here  
4 together with Commissioner Chuck Choney, and we have  
5 members of our staff. Joe Valandra is our Chief of  
6 Staff from the D.C. office. And Alan Phillips is in  
7 the Sacramento office, as is Eric Schalansky, our  
8 Regional Director there. John Hay is in the Office  
9 of General Counsel, and Natalie Hemlock is an  
10 assistant to the Commission.

11 And we have others here that may be working  
12 on air-conditioning issues or whatever that will  
13 probably be joining us.

14 We're here pursuant to proposed regulations  
15 NIGC published in the Federal Register on the 25th  
16 of May that address possible changes in definitions  
17 and possible regulations that would address how you  
18 distinguish electronic technologic aids that can be  
19 used for uncompacted Class II gaming from electronic  
20 facsimiles of games of chance that are Class III and

21 can only be played pursuant to a compact.  
22 And we're gathering comments from tribes.  
23 When we get all of that together, we may well have a  
24 public hearing later this summer or this fall to  
25 further supplement getting the advice that we need.

1 And then at the end of the day, consider all of  
2 that, decide do we want to go forward with these  
3 regulations? And if so, the drafts that we have  
4 published will be changed.

5 So we're eager to hear what you have to say  
6 in this regard. And because the court reporter will  
7 need to know who's doing the talking, perhaps you  
8 could, first of all, introduce yourselves and tell  
9 us how you're associated with the Tribe or its  
10 gaming effort.

11 MR. REID: My name is Morris Reid. I am  
12 the vice chair to the Tribal Council of the Picayune  
13 Rancheria.

14 MR. EMERICK: My name is Mark Emerick. I'm  
15 the Picayune Rancheria Tribal Gaming Commission  
16 Chairman.

17 MR. DURAN: Jack Duran, legal counsel,  
18 Monteau and Peebles. Legal counsel for the tribe.

19 MR. LIVINGSTON: I'm Jeff Livingston, the  
20 General Manager of the Chukchansi Casino, which is

21 the property owned by the Picayune Rancheria.

22 MR. STACY: John Stacy, Assistant General

23 Manager of the casino operations, the Chukchansi

24 Gold Resort and Casino.

25 CHAIRMAN HOGEN: Thank you.



1           MR. REID: And I would like to probably  
2 start this out on some discussion about what it's  
3 done for us as far as gaming and what we feel are  
4 the drawbacks of these changes and amendments to the  
5 Johnson Act.

6           And with that, I'll just go into starting  
7 it off with the feeling of, say, IGRA. I have a  
8 little thing I'm going to read here, because I  
9 probably couldn't remember if I said that, so I  
10 wrote it out.

11          The IGRA expresses Congress' underlying  
12 goal to promote economic development, tribal  
13 self-sufficiency, and strong tribal government. The  
14 IGRA has been the single-most successful economic  
15 development legislation ever passed by Congress.  
16 And with that, we feel that NIGC has done an  
17 outstanding job in implementing IGRA and tribes in  
18 benefitting from gaming.

19          And I'd just like to point out about the  
20 intentions of Congress. The gaming business has

21 been given to our tribe by good intentions of  
22 Congress and the voters of California. Some of the  
23 tribes of IA, or 1A have not fully benefited from  
24 gaming. We have invested with debt, and with debt  
25 comes responsibility to pay our bills. It became --

1 we have become business-minded from the gaming  
2 moneys that have been brought in, and we have been  
3 elevated to the level of running and hiring of  
4 highly qualified personnel for this and hiring of  
5 a -- of qualified persons on -- we call it the team  
6 of our gaming business.

7 And I have here, "Gaming extends our  
8 tribal" -- what -- also, moneys have been brought  
9 to -- and have brought us to a level is the tribal  
10 boundaries. Where we have been situated, Picayune  
11 and Coarsegold were our boundaries. With gaming and  
12 in the different, say, like issues of gaming, the  
13 boundaries have now extended for us to state and  
14 national-wide boundaries.

15 So this is one of the things that we have  
16 really enjoyed and has come to us through gaming.  
17 And we think that's a good thing to make a stronger  
18 and better self-government for ourselves.

19 And what we're saying also is that the  
20 moneys -- and I think a lot of people are getting a

21 misconception of some of the moneys that come into  
22 the tribe from gaming, of the, say, 19 billion or  
23 so, you know. But there are -- it's kind of a  
24 picture that maybe some of the tribes aren't fully  
25 enjoying.

1       As ourselves, through 1A, we have come into  
2 the business over three years now. But that moneys  
3 and enjoyment of moneys has given us abilities to  
4 better our programs, to make ourselves stronger in  
5 government, and to get into businesses that are  
6 going to promote the welfare of the tribe. And we  
7 think that, as we go down the road and as we're  
8 allowed to do this business of gaming in a way  
9 that's going to benefit tribes and not take away  
10 from tribes, we feel that this is something that  
11 down the road, as we see it, to educate our members  
12 and our young people, that we can be more so  
13 involved in this government or any government that  
14 we think that we can participate through education  
15 and through experience of being in those higher  
16 positions, and we look forward to that.

17       Right now, people look at gaming and look  
18 at the tribes and say, "Oh, look at that rich tribe.  
19 They've got all kind of money. They have all their  
20 problems solved."

21       You know, that's not the whole truth,  
22 because the fact that -- right now we're doing well.  
23 I'm not saying we're not. But with gaming comes  
24 paying bills, responsibilities that we are  
25 undertaking and that -- in that case, we don't

1 really have, say, per capita moneys that we would  
2 like to give the tribal members, because of the  
3 investments now that have to be put in place so that  
4 we will have a bright future down the road. And we  
5 realize this.

6       So as far as enjoyment of per capita and  
7 different moneys that are being -- say, like  
8 pictured community and throughout the nation that  
9 tribes are -- sometimes they look at us like, "Oh,  
10 they're just getting all kind of money. Too rich  
11 now," you know.

12       But we're in a situation where we are  
13 investing. And I think with money does not come  
14 overnight changes or good for anybody or tribes. We  
15 know that down the road -- I don't know what it's  
16 going to take, maybe ten years -- yes, we can,  
17 through those investments, have a brighter future  
18 for our children, for our elders.

19       And I think that this is where some of the  
20 agencies that are trying to make changes in what

21 maybe we feel that aren't in the best interests of  
22 the tribe are not looking to, because they see that  
23 through, say, different issues, negative issues that  
24 come up in gaming, that all tribes are benefiting.  
25 And these negative issues I talk about are off-site



1 gaming, the Abramoff scandal. And we also have the  
2 Pombo Bill coming out on the negativity of off-site.  
3 And I think that we look at it as yes, there are  
4 some problems, there are some issues. But these  
5 issues, as tribes and looking at tribes, should not  
6 dominate decisions in a negative way towards Indian  
7 gaming.

8 I think that agencies of the Government  
9 should look at down the road with us and not say,  
10 "Well, they have enough money now, give us some,"  
11 because I think these are still investments that we  
12 have to have time to put forward, like I said, to  
13 educate our kids and our children that one day we  
14 may be running the gaming business. We may be  
15 running our gaming facilities.

16 And no -- I'm sorry. He says, "Wait a  
17 minute." But these are things that we -- we feel  
18 that if we do not step up now to acknowledge these  
19 issues that are before us, especially in Class II  
20 gaming, that we could -- it could be detrimental to

21 us in our investments down the road. And we're  
22 asking and looking at this situation in Class II  
23 gaming that there be some deeper looking at this  
24 situation, due to the fact that -- that it could be  
25 harmful, not -- to us in ways that -- I'll just say

1 in economic development, self-sufficiency, and

2 stronger governments and sovereignty.

3 We feel that these are issues that coming

4 down from Class II gaming would affect us. And we

5 feel that Class II is something that is really vital

6 to the tribes anywhere.

7 One of the instances I take is that the

8 governors of different states are in -- a lot of

9 them are in debt. Their moneys -- there's problems

10 with moneys. And counties, the same way. And that

11 with -- with that direction of putting control in

12 the hands of states to put them in control of

13 revenues that they can take from the tribes is --

14 will be detrimental, as we are facing right now

15 through the compacts in California here. We're

16 being charged a large amount of money and a large

17 percentage of money just to get into gaming, and

18 this is causing negativity, which I just spoke of

19 before, to off-site gaming.

20 Many tribes go into the direction of trying

21 to find more lucrative areas and making bigger  
22 money, but it also lets the governor say, "Okay.  
23 I'll let you do that if you'll give me this  
24 exorbitant amount of money to go to these sites."  
25 Well, we, on the other hand, of existing

1 tribes that followed rules and regulations, come by  
2 and say, "Hey, we don't think that's right. We  
3 think every tribe should go by regulations." But  
4 the fact is, is that this could hurt us down the  
5 road, by this allowance of off-site gaming.

6 And it could hurt us that Class II is not  
7 in place, as we could use it as a leverage to make  
8 these governors come to the table in good-faith  
9 negotiations. This is seemingly not really  
10 happening, or it could be taken away from us in  
11 these negotiations.

12 So there is a lot of effect of what that  
13 may do for us. And I think that, as I was speaking  
14 of strength in government, I think these moneys from  
15 gaming has really done a wonderful job for us. It's  
16 strengthening our government status of our tribe.  
17 And I think that the -- the sovereignty, that's one  
18 of the issues, I think, that we're looking at and  
19 should look at because of the fact that some of  
20 these Class II that are going to be given to the

21 states and the involvement, or the way the states  
22 could use this could take away from the sovereignty  
23 of the tribes in this direction because of IGRA  
24 already determines Class II in a way that goes along  
25 with what, I think, the Congress had intentions of,

1 and that's greater economic development for tribes.

2 And I think by not looking at this in a  
3 way, that this could hurt the tribes, and states  
4 taking advantage of this over tribes would be a loss  
5 of sovereignty to the tribes in negotiating good  
6 faith. And I'd just like to say that -- that --  
7 that we're really looking at some of the issues  
8 because we -- we think that the -- where it stands  
9 now and NIGC, in court rulings and different  
10 decisions that come down in defining Class II in  
11 favor of the tribes and regulations, is a place that  
12 we should stay. And although I think these issues  
13 of different other problems that have happened  
14 should not be the effect to make a decision in  
15 taking this and changing this in a way that would  
16 hurt the tribes.

17 Thank you. And I'll let somebody else  
18 speak.

19 CHAIRMAN HOGEN: Thank you.

20 MR. REID: Jack, did you want to open with

21 a comment?

22 MR. DURAN: I was just going to add a  
23 comment that, on behalf of the Picayune Rancheria,  
24 the Chukchansi Indians Tribal Council, Tribal Gaming  
25 Commission, we welcome the opportunity to speak to



1 the Honorable Chairman and the rest of the  
2 Commission, and that -- as Morris has pointed out,  
3 that there are some concerns with regard to the  
4 proposed regulations that they will negatively  
5 impact the tribes on a global context and also will  
6 impact the Picayune Rancheria with regards to any  
7 prospective Class II regulations that -- Class II  
8 operation that they may engage in in the future.

9 And that should be a concern for, I think,  
10 any tribe with regards to the implementations of  
11 regulations that are going to affect a  
12 Constitutional obligation and, I suppose for lack of  
13 a better word, entitlement in the creation of IGRA.  
14 And from what the Honorable Morris Reid has talked  
15 about, the primacy of the agreement was to provide  
16 the economic -- the tribes the ability to create an  
17 economic base, and that anytime that regulations are  
18 going to intrude or impede or impose upon that  
19 economic base that we need to have an opportunity  
20 for more investigation and discussion with regards

21 to the basis of the change.

22 For example, there -- there's -- the

23 driving force, I believe, behind these proposed

24 regulations is the understanding that there is a --

25 I guess for lack of a better word, a difficulty

1 distinguishing between Class II and Class III  
2 machines. And that is, again, something that the  
3 tribe believes should be, I suppose, provided the  
4 opportunity to see the data that is raising this  
5 concern and provided an opportunity to view both  
6 sides of the question as to whether or not an  
7 issue -- an issue really needs this. And that the  
8 NIGC can then respond by providing regulations to  
9 deal with that particular issue.

10       So I'll go ahead and turn that over to  
11 Mr. -- the Honorable Mark Emerick from the Tribal  
12 Gaming Commission.

13       MR. VALANDRA: Can I ask a question before  
14 you do that?

15       MR. DURAN: Sure.

16       MR. VALANDRA: So what you're suggesting --  
17 or maybe you're just making the comment, I'm not  
18 sure. But are you suggesting that it's the opinion  
19 of this tribe or tribes in general that there is a  
20 distinction between Class II and Class III gaming

21 right now?

22 MR. DURAN: Well, yes. I think the court

23 rulings that have come down with regards to

24 identifying the different types of devices and what

25 constitutes a Class II and Class III game have been

1 sufficient for the courts to be able to make that  
2 identification.

3 MR. VALANDRA: Okay.

4 MR. EMERICK: I would like to start out by  
5 reading three different statements from three  
6 different documents. One document is the Tribal  
7 Gaming Regulations for the Gaming Commission:

8 "Authority to exercise by majority  
9 vote, the power to promulgate rules and  
10 regulations to implement and further the  
11 provisions of the Gaming Ordinance which  
12 are in accordance with the IGRA of 1988,  
13 the National Indian Gaming Commission  
14 regulations, and the Tribal/State  
15 Compact between the Picayune Rancheria  
16 of the Chukchansi Indians and the State  
17 of California, subject to approval by  
18 the Tribal Council."

19 The next statement is from the Tribal  
20 Gaming Ordinance, and it is:

21            "The Tribal regulation and control  
22            is essential for protection of public  
23            health and welfare of the Tribe and  
24            visitors to the Tribal community.  
25            Licensed and regulated gaming in

1 conformance with Federal policy promotes  
2 Indian self-government and Indian Tribal  
3 economic self-sufficiency."

4 The third statement is from our Policies  
5 and Procedures of the Gaming Commission:

6 "It is to regulate and protect  
7 Tribal assets and to maximize profits  
8 for the membership of the Tribe in a  
9 responsible, respectable, and honorable  
10 manner."

11 With those three statements being said, we  
12 have one issue in the proposed legislation, which is  
13 the certification of games. And I'd ask the  
14 Commission the question: Do you think, in regards  
15 to certification of games, does that take away any  
16 of the power given to the Tribal gaming agencies or  
17 Tribal gaming commissions throughout the nation?

18 CHAIRMAN HOGEN: Well, I think that it's a  
19 valid point. That is, if the 225-plus gaming tribes  
20 all got to decide on their own what they thought was

21 or wasn't Class II gaming, my guess is we'd have  
22 quite a range of what one could or couldn't do  
23 without a compact. And this is kind of how we got  
24 into this fix in the first place.

25 In Oklahoma, tribes are literally located



1 right across the street from one another, and  
2 they're competing for the same customer base. And  
3 we found that because they couldn't get compacts,  
4 they tended to push the envelope as to what they  
5 could play as Class II, and some of them just went  
6 too far.

7       And the previous Commission, before we came  
8 on board in 2002, had to deal with that. And the  
9 way they ended up dealing with it, in part, was  
10 closing some of those facilities, assessing fines.  
11 I think the fine on the closed Seminole of Oklahoma  
12 tribal facility or tribe was \$9 million. And that  
13 is just not a pleasant way to have to deal with what  
14 is or isn't Class II.

15       The Indian Gaming Regulatory Act created  
16 the National Indian Gaming Commission, and it  
17 mandated that, among other things, we promulgate  
18 standards. IGRA says you can do Class II gaming  
19 with technologic aids. It also says if it becomes  
20 an electronic facsimile of a game of chance, then

21 it's Class III. And therein lies the problem.  
22 Where do you draw the line between the two?  
23 And so we think that if there's an area  
24 that cries out for Federal standard-writing, this  
25 would be one of them. And that's what we're trying

1 to do, and we're trying to do it right. And we're  
2 not trying to take away any or all discretion that  
3 tribal gaming commissions or tribes have in this  
4 area, but we're going to try and draw that bright  
5 line so that we don't have 225 different models and  
6 some of them going way beyond the pale.

7 IGRA was, is, an infringement into tribal  
8 sovereignty. I'm not promoting that or saying  
9 that's a great thing, I'm just saying that's the way  
10 it is. Tribes can't do Class III gaming without  
11 going to the State, that's an infringement. NIGC  
12 was given some oversight, that's an infringement.  
13 That's what the law is. And as the vice chair said  
14 here earlier, it's been the best economic  
15 development tool we've seen. It's certainly not  
16 perfect, but it's provided for an economic  
17 development miracle in many parts of Indian country,  
18 so we're trying to get along.

19 And when tribes make that decision, "We're  
20 going to invest in Class II gaming equipment, we're

21 going to put millions of dollars in this investment  
22 to supplement our Class III or do it in place of  
23 Class III," or whatever, they need to know that  
24 they're on solid ground; that somebody's not going  
25 to come along tomorrow and say, "Sorry, those

1 machines are Class III, you can't use them," and  
2 you've wasted your money.

3       So we've put our model out there, we're  
4 getting good advice with respect to how it might  
5 impair economic development opportunity and so  
6 forth. And at the end of the day we're going to try  
7 and come up with a set of regulations that will draw  
8 that line, give tribes some discretion.

9       But it will put that certification process  
10 in there if we go forward with the model that we  
11 have now. And it can certainly be argued that that  
12 takes away some discretion of the tribe.

13       MR. REID: Can I ask one question?

14       You know, I'm just thinking about the  
15 Class II and the tribes having that ability to bring  
16 in Class II machines without a compact with the  
17 tribes. And sometimes you look at it in changing  
18 these different technological moves is that not only  
19 should, say, maybe, NIGC look at the fact that they  
20 were remodeling it to a way that does things or it

21 doesn't take away from the tribes, I think there  
22 should also be a model looked at, that how far can  
23 you get that states an ability that has the same  
24 ability as, you know, the model you're coming out  
25 with. Because I think that these changes should

1 also be taking effect, because there are going to be  
2 some tribes that aren't going to have that ability  
3 to move to a machine that maybe there's going to be  
4 restrictions that keeps them from going into, say,  
5 Class II for business.

6 I don't think there should just be a model.  
7 I think there should be a fallback model for tribes  
8 that can't meet that or won't because of certain  
9 restrictions.

10 MR. EMERICK: I would just like to add,  
11 also, that in regards to this document, the Tribal  
12 Gaming Ordinance of the Picayune Rancheria of the  
13 Chukchansi Indians, which was amended as of  
14 September 17th of 2003, in Title 1, Regulation of  
15 Class II and Class III Gaming:

16 "A law to authorize, license, and  
17 regulate the conduct of Class II and  
18 Class III gaming within the jurisdiction  
19 of the Picayune Rancheria of the  
20 Chukchansi Indians."

21           And with that being said, I wish that the  
22 Tribal Gaming Commission could certify the games,  
23 the Class II games, as they do with the Class III  
24 games presently. And that's basically the -- the  
25 main discussion is the certification process of



1 those games, specifically with yourself certifying  
2 the game.

3 I believe there is an appeal process that  
4 the tribe can appeal your ruling?

5 CHAIRMAN HOGEN: Yeah. You know, I -- I  
6 just want to be clear. The tribe does, just like it  
7 does with the Class III now, certify these games.  
8 You can't put them on your floor until you certify  
9 them.

10 What this will add, of course, is that  
11 certification has to include compliance with the  
12 NIGC specific regulation, and that will be achieved  
13 by sending it to an NIGC certified lab, and they'll  
14 test it to see if it meets these standards.

15 Now, let's assume that Picayune and a  
16 gaming manufacturer send a machine off to the lab,  
17 and they test it and they say, "Well, it's close to  
18 the line, but we think it's Class II." And they  
19 have to send their report to us.

20 And we say, "Wait a minute. It looks like

21 under certain circumstances, there can only be one  
22 player. And that won't pass the test, so we object  
23 to that."

24 And the tribe and the manufacturer, then,  
25 could appeal my decision to the National Indian

1 Gaming Commission. They'd look at what I decided  
2 and say, "Yes, he was right," or, "No, he was  
3 wrong." If they say, "Yes, he was right," and the  
4 tribe still disagrees with that, as does the  
5 manufacturer presumably, then that's appealable to  
6 Federal Court.

7       You could go into court and get your day in  
8 court and see if we were wrong. Were we arbitrary  
9 or capricious when we did this, for example.

10       MR. EMERICK: Could there -- in that  
11 appeal process, could there be a stalemate between  
12 the Commission?

13       CHAIRMAN HOGEN: Well, there are two  
14 commissioners here. I guess if I said, "No, it  
15 doesn't work," and then you appeal it to the  
16 Commission and there are just two of us, and Chuck  
17 voted yes and I voted no, we haven't overturned the  
18 rule of the chair. So I assume that would still  
19 stand.

20       But I hope the day is coming soon when we

21 have three commissioners and we won't be in that  
22 fix, where it could be a one-to-one tie. And I  
23 usually listen to Chuck, so --  
24 COMMISSIONER CHONEY: Yeah. That's the  
25 reason why there are three commissioners. And we're

1   shorthanded. We need one in a hurry. So.

2           If you know anyone out there who wants it,  
3   throw their hand in.

4           MR. EMERICK: Also, I'd like to probably go  
5   into the operational side a little bit. Presently  
6   the tribe has a compact for 2,000 machines and,  
7   unfortunately right now, we have 1800. And by the  
8   ruling on Class II games, that could be taking away  
9   an alternative for the tribe to gain self-reliance  
10   and self-sufficiency in getting those extra 200  
11   games which produces revenue for the tribe.

12           And it's basically on -- how I see it, it's  
13   a power play between the State and the tribe on  
14   either issuing licenses or not and trying to force  
15   the hand of the tribe to renegotiate the compact,  
16   which might not be beneficial to the tribe in the  
17   long run.

18           CHAIRMAN HOGEN: Well, in that  
19   connection -- I'm not sure you're suggesting this,  
20   but the state of California or no states are pulling

21 our string, so to speak. That is, we're trying to

22 fill this gap, that is, and bring some clarity to

23 this issue.

24       And I think it will cut both ways. Right

25 now, there's some uncertainty there. The State has

1 to wonder, "Well, what can they do if we don't do  
2 the compact?" And the tribe, likewise, has to ask,  
3 "What can we do in addition to or if we don't get  
4 the compact?"

5 I think in the long run, everybody would be  
6 better served if there's a line there and you know  
7 what you can do. So the State will say, "Well, we'd  
8 better enter into the compact or they'll go do  
9 Class II." And, of course, it will depend on how  
10 profitable, how fun, how attractive those games are,  
11 you know.

12 But these court cases that were decided  
13 that are kind of the foundation for where we are  
14 going dealt with the MegaMania machine in many  
15 cases. You had to have 12 players to play  
16 MegaMania; you had to have a minimum of 48 bingo  
17 cards. It took over a minute to play the game. And  
18 what we're proposing here, you could play six games  
19 in a minute, and you could play it with just two  
20 people. And so I think we've provided quite a

21 little flexibility there.

22 But we're still listening to tribal advice

23 about are we making it take too long and things like

24 that.

25 MR. DURAN: On the topic of games -- did



1 you have further comments?

2 MR. EMERICK: No.

3 MR. DURAN: Would you like to comment on  
4 that?

5 MR. LIVINGSTON: Yeah, I can speak to it  
6 from the side of the -- I'm from the casino side,  
7 Jeff Livingston, the general manager.

8 But I also have a pretty extensive  
9 background. I've been with the Indian gaming side  
10 of it probably from the time it started. I'm also  
11 related to -- we have a family business, which is  
12 VSR, which provides all the locks, basically, about  
13 99 percent of the locking devices, security locking  
14 devices on all slot machines, all the stuff. That's  
15 our family-owned business out of Las Vegas. And we  
16 do all the drop boxes, tote boxes, have been  
17 involved in all the cage projects. So the security  
18 and protection of assets is part of our family  
19 business. We grew up in it.

20 I also, then, went with Bally Gaming and

21 helped design slot machines for a while, and then  
22 later did some software design in regards to  
23 management so that we could get good management, or  
24 clean management in the Indian gaming arenas.  
25       And I originally was -- my first job was at

1 Grand Casinos up at Mille Lacs. I worked for Marge  
2 Anderson, whom, you know, I still to this day love  
3 her to death, and I think it was a great  
4 opportunity. I've served several tribes. I'm very  
5 proud to be with the Picayune Rancheria of  
6 Chukchansi as of today.

7 But where we talk about the games and some  
8 of the questions we had, the first comment I have is  
9 we are extremely satisfied, and I have always been,  
10 speaking for myself and then from the tribe also.  
11 Myself personally, the NIGC, we've always had a  
12 great rapport. We've had a lot of respect for you.  
13 And the tribe feels the same way.

14 We do have concerns that may be -- where we  
15 think might be underlying and not in regards to the  
16 NIGC. One of the things is just the information  
17 that we pass and the communication we have, because  
18 we want to be held accountable and regulate so the  
19 assets are protected. But we worry a little bit  
20 about who brought this forward in the direction that

21 it gets to you and what might be underlying things.

22       Why we have concerns -- our main concerns

23 are we're in California in Central Valley. And the

24 Central Valley, basically from Bakersfield up to

25 Modesto. It's been identified in a lot of realms as

1 being the fastest-growing area in the United States  
2 and will be over the next 10 years. And so we're  
3 talking about being the next Orange County.

4       And just what we've seen in the last couple  
5 years is that gaming has now equalized the  
6 agriculture business in that valley, which was  
7 extremely strong. We know that there's going to be  
8 some challenges out there in regards to that we are  
9 a great revenue source and continue to be so, as is  
10 the State of California.

11       What we worry about is if -- if a change  
12 takes place without enough communication that -- and  
13 if someone pushes it from the side and not  
14 yourselves, and that we're not involved in it or the  
15 tribes aren't involved in it, what are the  
16 underlying statements that take place? There's one  
17 that came from Mark, our Commissioner, is that the  
18 State then has a stronghold over us going forward on  
19 compacts. And because of where we stand, they go,  
20 "You can't do these things," which right now are in

21 our favor.

22 And I will tell you that we are adding

23 Class II games, but they are the barcrest games.

24 They fit within the models that you currently have

25 as acceptable Class II games. So we are going to be

1 adding those games.

2 But we worry about where this underlying  
3 intent is. And if it is -- right now it may seem  
4 like it's pointing towards Oklahoma. And we worry a  
5 little bit about where we sit in regards to our  
6 earnings. We're -- the majority of the earnings in  
7 the Indian gaming come from California and continue  
8 to grow. They show us where, in the next 10 years,  
9 we should be able to surpass Las Vegas.

10 So we worry about what the underlying  
11 meaning behind this might be. Is it something that  
12 stops us from negotiations or the strength of our  
13 negotiations in the future in California? And if  
14 so, then that's our main concern, because it may --  
15 right now we're not saying that's happening. Just  
16 the color of it is that we should address it,  
17 because we need to have the strength for the tribes,  
18 the economies of the tribes of California to  
19 negotiate fair compacts and fair agreements on a  
20 fair playing field. Right now, I don't think that

21 it takes place in the State of California.

22       So we're not saying that that's your fault.

23 We're just saying that we feel that there may be an

24 underlying reason that this got pushed or

25 promulgated to this point, and we want to address



1 that with you and say, you know, from our  
2 standpoint, we believe in you. We know that you're  
3 looking at this, and we'll be looking at it with you  
4 in regards to the breakdown of what it is that's  
5 proposed.

6 As far as games go or the comments that I  
7 can make in regards to the games is -- you know,  
8 some of the questions that come up because we're  
9 talking about a game of chance versus a game of  
10 skill in the Class II game. And oddly enough, from  
11 my perspective, I kind of see us almost opposite of  
12 where we might want to be.

13 My comment would be a game of skill and a  
14 game of chance, when we talk about the bingo card,  
15 we talk about a sophisticated player. I mean, I  
16 just went down to Harrah's Rincon this last week. I  
17 was on a barcrest game there and wanted to try it  
18 out in regards to it. And you're daubing and you're  
19 playing it so much differently than a slot machine.  
20 I know the time restraint that's involved in the

21 game.

22       But it does dissatisfy the customer and, in  
23 my opinion, gives the game of chance a game of  
24 skill. It inverts it, because a savvy bingo player  
25 becomes the -- they have more opportunity with the

1 same dollar that they put in the game that you do if  
2 you're a nonsavvy bingo player because of the  
3 knowledge that they have in regards to daubing or  
4 times and how to play the card. So I thought wow,  
5 that kind of inverts what we're trying to accomplish  
6 with the Class II game, and yet that's the game  
7 that's accepted under the NIGC's rulings.

8       So you say well, maybe we need to  
9 re-address what that is and how that game of skill  
10 or game of chance takes place. Because I noticed I  
11 didn't have anything on my -- nothing mattered what  
12 was on the screen, and that's the argument, what  
13 people are saying. It looks too much like a slot  
14 machine. But that has no play or effect in the  
15 game, it's actually a visual stimuli that somebody  
16 gets. And they actually process it through with a  
17 visual stimuli and say well, that's pretty.

18       But then they gotta play the game and you  
19 go, "I don't have a clue what's going on." It just  
20 says daub, so you daub. It says daub now again, and

21 you daub. You're playing a bingo card and none of

22 what is visually in front of you actually is the

23 enhancement to the game.

24       So as far as a Class II game, yes, it does

25 meet what -- and this is the game that you've

1 regulated and said it's fine and fits within the  
2 regs. But it's -- to me, it's got an inverted piece  
3 to it, so I'm concerned in regards to that.

4 But our main goals -- and like you said, as  
5 I walk through it, you know, the things that -- the  
6 issues are what surrounds the proposal? And if we  
7 can be involved, we'd like to be because we respect  
8 you. We believe you're going to take the time to  
9 look through this argument and make sure that people  
10 are protected.

11 We -- what happens in Oklahoma does have an  
12 impact on California is what we feel, because if we  
13 don't have the right to go towards our states with a  
14 fair opportunity, then we've put ourselves in the  
15 backseat.

16 We're the only ones in our valley with 1800  
17 games. And I just went out and did the refinancing  
18 for this tribe in New York and got bondholders from  
19 all the major bondholding companies. And it was a  
20 litany. We probably ended up with about 100

21 bondholders into regard to our deal, which is an  
22 extremely large number of bondholders. We sold  
23 about 310 million. And we were sitting in front of  
24 them, and they said, "How do you get the other 200  
25 games? Can you tell us?"

1           Commissioner, I have no idea, because the  
2 State won't allow us to understand it. They go, you  
3 know, it's a limited number of games. Of course, if  
4 you pay a certain amount of money, then the limit  
5 goes off. You're in this mix, and, I mean, as games  
6 come in every year, we pay the price to get those  
7 other games and we don't. But the fact is if they  
8 take away our right to at least have Class II and a  
9 bargaining chip, we may not get those other 200  
10 games.

11           I told the bondholders, I said, "I believe  
12 it's Ouija board at the State and they kind of go  
13 through it, because no one's told us how to do it."  
14 That's just an argument we. If we get this part of  
15 our negotiating chip, the Class II game taken away,  
16 we feel that it puts us backwards, especially with  
17 our growth. And the estimated growth in our valley  
18 is close to 600 percent over 10 years. And the last  
19 thing we want to have is no shot at our part of that  
20 600 percent.

21           CHAIRMAN HOGEN: Well, we're certainly  
22 trying to take a global view of this. That is,  
23 we're not trying to impose a solution that will  
24 solve a problem in one state that doesn't exist in  
25 all the rest of them. And that's why we're



1 traveling the country to hear the concerns.

2       And we'll try not to be unmindful of this  
3 economic boom challenge and the very conservative  
4 approach the State is taking with the Indian tribes  
5 and so forth.

6       With respect to your description of the  
7 game, I think what I heard you say was boy, these  
8 games play differently. There's a difference  
9 between that Class III experience and the Class II,  
10 and the little bingo-savvy kind of makes a  
11 difference.

12       Well, I would agree with you that if -- you  
13 could probably have less difficulty training your  
14 players and your customers if they all played the  
15 same, but I think Congress intended, you know, that  
16 there were two different classes here. And we're  
17 trying to maintain that difference but not keep  
18 bingo in the stone age, but permit bells and  
19 whistles and technology, but still preserve that  
20 difference. So that's a challenge.

21           Well, we're running about out of time here.

22   If there are any concluding comments you would like

23   to make, we'd be happy to hear them.

24           MR. REID: Well, I'd just like to say that,

25   you know, we're glad you're meeting with us. We're

1 glad that you've come here to meet with us. And we  
2 just come here to state our concerns on what we feel  
3 is something that might be detrimental to the  
4 tribes. But we also understand that there have also  
5 got to be things in there that we have all got to  
6 abide by. But we just hope that you will take into  
7 consideration all of these issues and our input, and  
8 that -- and I know you would do this. But, you  
9 know, the other issues that might put a negativity  
10 on Indian gaming as a whole in making a decision or  
11 putting our input to -- as we see it.

12       We actually oppose this because we think  
13 that Class II is something that we've had all along,  
14 and that we can see that other tribes are using  
15 Class II, which is beneficial to them. But we see  
16 that -- also, that we just don't like the way that,  
17 if Class II is determined, that the states have that  
18 control and ability to exorbitant -- you know,  
19 outrageously astro moneys in allowing us, even at  
20 Class II.

21           And that's just our experience with the  
22 State in coming to dealings with them. And we are  
23 told that we must pay our fair share, yet we didn't  
24 make the deficit of California. I think there was  
25 some people other than us that did that, yet that

1 actually takes away from the economic development of  
2 the tribe when they do this. And I don't think IGRA  
3 or the Congress or yourselves had meant this to be  
4 in that way, but develop for the tribes in a good  
5 way.

6 CHAIRMAN HOGEN: Okay. Thank you very  
7 much.

8 MR. REID: Thank you.

9 (End of the Picayune Rancheria Tribe  
10 discussions.)

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1           BISHOP PAIUTE TRIBE

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3           CHAIRMAN HOGEN: Good afternoon. Welcome.

4           I'm Phil Hogen, chairman of the National

5 Indian Gaming Commission.

6           We're gathered here in Ontario, California,

7 on the 26th of July, 2006 pursuant to the proposed

8 regulations of the Indian Gaming Regulatory Act

9 published in the Federal Register on May 25th that

10 relate to the definitions and some proposed

11 regulations that relate to better defining the

12 distinction between technologic aids the tribes can

13 use for Class II uncompacted gaming and those

14 electronic facsimiles of games of chance that the

15 Indian Gaming Regulatory Act says are Class III and

16 require a compact.

17           Here with we today is Commissioner Chuck

18 Choney. As it stands today, Chuck and I are the

19 full commission. And we have from our staff in

20 Washington, Joe Valandra is our Chief of Staff.

21 He's here. And Michael Gross is in the Office of  
22 the General Counsel. Alan Phillips is in our  
23 Sacramento office, an investigator; John Hay is an  
24 attorney with the Office of the General Counsel.  
25 Eric Schalansky is our Regional Director from the



1 Sacramento office. And Natalie Hemlock is an  
2 assistant to the Commission in Washington, and Penny  
3 Coleman is our Acting General Counsel.

4 So we are focusing on these proposals that  
5 we've made. We'd be very interested in hearing your  
6 comments and concerns in this regard. So if the  
7 court reporter will keep all of us straight, perhaps  
8 we could first -- you could introduce yourselves and  
9 tell us your affiliation with the tribe or its  
10 gaming effort.

11 MR. HESS: My name is Mervin Hess. I'm the  
12 Gaming Commission Chairman slash Director for the  
13 Bishop Paiute Palace Casino, Bishop Tribe. And I  
14 extend our apologies for out Tribal Council members,  
15 representatives. The chairman wasn't able to make  
16 it.

17 We actually have a transition at the  
18 council right now. Those elections held in July are  
19 general elections held, and they're having the  
20 swearing-in ceremonies tomorrow. So there will be

21 three new members going on board, on the council,  
22 five-member council, and they will be selecting a  
23 chairman at that time, a new chairman. The past  
24 chairman did not run for this term.

25 Getting back to our introductions, that's

1 who I am.

2 MS. BAILEY: I'm Gloriana Bailey. I'm the  
3 General Manager for the Paiute Palace Casino.

4 MR. LePERA: My name is Ralph LePera. I'm  
5 an attorney by trade, and I represent the tribe  
6 itself and the gaming corporation.

7 CHAIRMAN HOGEN: Very good. Well, extend  
8 our congratulations to the new members of the  
9 Council. And one of the things that our California  
10 region is particularly good at is providing  
11 orientation and training to new tribal council  
12 members, new tribal gaming commissioners. So if we  
13 can provide assistance in that regard, we stand  
14 ready to do that. And we know that just because you  
15 get elected doesn't mean all of a sudden you know  
16 all of the answers. If we can provide assistance,  
17 we'd like to.

18 But we'd be very interested in hearing your  
19 comments with regard to these issues.

20 MR. HESS: Okay. I guess from my point of

21 view, just the history of myself, I was the Tribal  
22 Chairman for three years, and that was during the  
23 compact negotiations with the State back in '96  
24 through '99; and vice chairman for the year 2000 and  
25 was off for two terms -- one term; and was a regular

1 council member for two years.

2 But I guess, starting off in the beginning,  
3 with the uncertainty of Indian gaming in California,  
4 at least at that time in '96, '97, '98 and the VLT  
5 machines, video terminals and so on, we had some  
6 issues at that time determining what type of  
7 machines were legal or not legal -- or illegal. And  
8 I know that all the tribes in the state, we  
9 obviously went for the Proposition 5, and then that  
10 was passed, and we thought we had some clear sailing  
11 there. And then that was termed illegal, the  
12 proposition, so we went back to proposition 1A and  
13 started over.

14 And I think during that time, at least from  
15 my perspective, during these negotiations, we  
16 thought we had a clear path down the road as far as  
17 our future in Indian gaming in relation to machines,  
18 infrastructure.

19 And at that time we were also developing  
20 our MICS. And in the beginning, I was actually the

21 original Gaming Commissioner when we first opened  
22 the casino prior to my councilship and my  
23 chairmanship. And at that time we had no internal  
24 controls, no regulations to go by, so obviously we  
25 borrowed from here and there and developed what we

1 thought were pretty basic minimum internal control  
2 standards for the operation of the casinos,  
3 regulations compliance.

4 And we all know that that's a working  
5 document. It's changing from time to time, week to  
6 week, month to month, and year to year. And I  
7 believe that we realized, you know, there's going to  
8 be changes in the MICS and with the internal  
9 controls and, I understand, through the years with  
10 Class II gaming, the definition of bingo, electronic  
11 aids and so on, which we all thought we were  
12 complying with and actually developing the tribal  
13 advisory task force to work with the Department of  
14 Justice on those regulations -- or the National  
15 Indian Gaming Commission, I should say.

16 So I really feel that the uncertainty of  
17 the type of regulation compliance, being a gaming  
18 commissioner right now, and having the adequate  
19 consultation, I guess, collaboration with NIGC, it's  
20 been a working relationship with NIGC. And we have

21 attended training classes, our commission, through  
22 the Sacramento office. We have a good relationship  
23 with the Temecula office, who are our field  
24 representatives.

25 And getting back to my point about the



1 internal regs, I really feel that, you know, we were  
2 working on the -- I guess you could say the  
3 resolution of the Class II machines at that time.

4       And then the Department of Justice came in  
5 and basically started carrying the water bucket of  
6 the NIGC, determining or wanting to do it legally  
7 through a statute to change that definition. And  
8 realizing that maybe that was going a little too far  
9 and they were actually superventing the regulation  
10 authority of the NIGC. And I believe at this point  
11 they've turned it back to the NIGC, and that's why  
12 we're sitting here to try to discuss the changes in  
13 that statute.

14       But looking at the proposed regulations, we  
15 have an attorney. Mr. LePera has written up at  
16 least 10 points of interest -- or 12 points of  
17 interest that we have concerns about in those  
18 regulations. And my, I guess, input would be from a  
19 historical point of view and the uncertainty. You  
20 know, once we set a standard, we realize there's

21 going to be changes, but I think that's with the  
22 collaboration of both parties, including the tribes.  
23 And being involved with the negotiating and  
24 rule-making committee on the Indian reservation road  
25 system, being the vice president of the National

1 Congress of American Indians for the California  
2 tribes through '99 and 2000, you know, I really  
3 respect the consultation policy. And I think other  
4 agencies, Federal agencies, should respect that  
5 policy.

6 And to me, to individual tribes, you know,  
7 set aside 15 minutes, I don't really feel that's  
8 respect to each tribe as a sovereign government. I  
9 really believe that we should do it the way it  
10 should be done, which is an open discussion.

11 It reminds me of the land exchange that we  
12 went through in our tribe with the Department of  
13 Interior, Los Angeles Water and Power. What they  
14 did was they divided the tribes, the Indian tribes,  
15 the people, so they could get the vote for each  
16 individual group in those areas. They didn't want  
17 to hold a big meeting, they wanted to divide up the  
18 tribes. And actually, we voted against that, but we  
19 were outvoted by the two other tribes.

20 I really feel that's what's happening again

21 here, is there's collusion, collaboration in not  
22 letting each tribe speak their mind in front of  
23 other tribes. And I'm not sure if it's because of  
24 other tribes feeding off other tribes, but every  
25 tribe is individual.

1           And our tribe is -- we're glad, you know,  
2   with the casino itself, with our people. We've had  
3   a long history -- our geographical area is so  
4   isolated that we have no economic development.  
5   Los Angeles Water and Power has a hold on economic  
6   development in our area due to the water. The more  
7   water you use up there, the less down here. And the  
8   tribe is really the only, I guess you could say  
9   entity or government that can expand on that. But  
10   our land base is so small that we don't have the  
11   land base to support it. We do have the commercial  
12   infrastructure part that we set aside for  
13   development, commercial investments and so on. But  
14   the casino is only the really -- right now, at this  
15   time, the -- I should say the cash cow.

16           We're creating employment. We have 175  
17   tribal employees. 80 percent of those people are  
18   Owens Valley Indians in the area. And I really  
19   believe it's helped economically with getting the  
20   people off welfare and self-esteem for our people,

21 for the other tribes, and for the local economy, the  
22 community of Bishop. We have a good relationship  
23 with the community.

24 And Gloriana, as the general manager, can  
25 go into that a little later. And I'd like to just

1 say that, you know, we'd like to see some -- I guess  
2 you could say appropriate measures taken where it  
3 satisfies both parties.

4 And that gets back to my point with the  
5 Tribal Advisory Group. We thought that was coming  
6 to a conclusion, and then all of a sudden we have  
7 the Department of Justice maybe trying to enact the  
8 Johnson Act into that, where tribes are being held,  
9 criminally charged, leaders, for violating that. I  
10 really believe it should be a collaborative effort  
11 on both parties.

12 So getting back to the points of the  
13 discussion, I guess I'll turn it over to Mr. LePera  
14 for his input on the regulations itself.

15 MR. LePERA: Both Mr. Hess and Mrs. Bailey  
16 are very courteous, tactful individuals, and they  
17 have good hearts. And that's probably why I get to  
18 talk now. I don't have that good a heart. I mean  
19 to be as courteous and respectful as possible and I  
20 do have as much respect as one could have for you

21 folks individually. We do have some very serious  
22 philosophical problems.

23       And you talked about we were going to talk  
24 about classifications. And, you know, of course,  
25 that's one of the issues here. We don't think



1 you're dealing with classifications. I think what  
2 you're doing is you're taking the Indian Gaming  
3 Regulatory Act and you're taking the issue of bingo,  
4 and you're going to regulate these technical changes  
5 to come up with some kind of a definition for bingo  
6 that's not in the regulations and it's not in the  
7 statute.

8       We have some real fundamental problems with  
9 a commission that is established by the Indian  
10 Gaming Regulatory Act which sets out as its goal and  
11 objectives in a strong -- you've all heard it, you  
12 all know it, the strong tribal government,  
13 self-sufficiency, and economic development. That's  
14 the goal and objective in Congress in establishing  
15 that statute.

16       And to see a commission -- and it's not  
17 just this tribe here. One of the reasons we're here  
18 is -- and I say this respectfully -- we know nothing  
19 is going to be changed for these meetings. We've  
20 watched the so-called consultation process over the

21 years and we've seen how those consultations take  
22 place. We've seen how the tribal experts, whether  
23 they're lawyers or otherwise, have been dealt with  
24 at the hearings. We see how the committee that's  
25 supposedly the Indian Advisory Committee is

1 selected. We see that all through the country.

2       So when we read in the Register about these  
3 continuing consultation processes, you know, we're  
4 not -- you know, we're not fools. We understand  
5 what that means and we understand why it's there,  
6 but we feel that it's very important that we come to  
7 these meetings to make sure that the record is clear  
8 that not only this tribe but the other tribes that  
9 are speaking here oppose these regulations  
10 absolutely.

11       One, when you look at the regulations that  
12 are being proposed for publication and you look at  
13 all the input that was given to you folks over these  
14 consultation periods, you look through there and  
15 it's very difficult to find, if anything, where  
16 those comments are incorporated. So that when we  
17 come to here, which is on July 26th of the year  
18 2006, it appears that it's already a done deal.

19       So what we're basically talking about is,  
20 is making sure that we make the record and that we

21 understand. We understand that IGRA defines bingo.  
22 We don't need regulations to tell us what bingo is,  
23 because the regulations tell us and the statute  
24 tells us, and we have cases that tell us. You know,  
25 MegaMania and the Lucky Tab and all of these cases

1 that have come down, the courts have backed the  
2 tribe and the position that this Commission used to  
3 have as to what the definition of bingo is. So that  
4 when we look at something that is called  
5 regulations, and by the very essence of those  
6 regulations those court decisions are in jeopardy,  
7 that the machines that are out there are in  
8 jeopardy, one may conclude that what we're really  
9 looking at is the Commission siding with states that  
10 are having problems compacting with tribes within  
11 the states. And instead of being opposed and taking  
12 the opposite position that the Department of Justice  
13 takes, which is a political entity, the Commission  
14 now appears to be hand in hand or -- I guess not  
15 sleeping with, that wouldn't be appropriate on the  
16 record -- but is certainly going along with the  
17 position that is being taken by the Department of  
18 Justice at the present time.

19       So the experts tell me who review these --  
20 and I don't claim to be a hands-on

21 regulation-by-regulation expert, but when I sit down  
22 and I talk with the people who are retained to  
23 review these regulations and they say to us that the  
24 effect of these regulations would be to affect  
25 approximately 50 percent or more of the machines

1 that are out there, I then say to myself and others  
2 say to themselves, "What is the Commission doing?"  
3 I mean, isn't the Commission part of the regulatory  
4 framework, the statutory framework? So whose side  
5 is the Commission on? That's just a rhetorical  
6 question because it's obvious.

7       Every time the tribe gets a judicial  
8 decision, the Commission works at, apparently,  
9 trying to find how do you get around that piece of  
10 litigation? Every time a manufacturer brings in a  
11 new piece of equipment that would fall within the  
12 definitions that are set out by the courts, it would  
13 appear, by reading the regulations and the proposed  
14 regulations, that the Commission is attempting,  
15 again, to plug these holes. It's like you're  
16 treating these as holes that you have to plug.

17       You can't let the tribes be successful  
18 through litigation because something's wrong with  
19 that. And what's wrong with that is that the  
20 politicians in certain states, and, you know, we

21 don't need to go through that, are putting pressure.

22 And it's incredible to see Indian people -- an

23 Indian commission, an Indian statute being used to

24 do what?

25 Just look at the -- we've read the -- and



1 you -- I know the stuff that you're getting fed and  
2 all that sort of stuff as far as the statistics, but  
3 those statistics must be somewhat true. You're  
4 talking about millions of dollars that are going to  
5 be affected if in fact these regulations go into  
6 effect.

7       Number two and three, and then I'll stop.

8       We've gone through approximately 10 to 12  
9 years of litigation with all these various  
10 regulations, et cetera. We've got the MegaMania  
11 case, we've got the Lucky Tabs, we've got the  
12 Seneca, we've got all these cases. All came down in  
13 favor of the tribes and the Commission.

14       Now, what are we looking at? Instead of  
15 tribes being able to spend those millions of dollars  
16 that are going to be spent in litigation, we all  
17 know that. I mean, they're -- you know, the  
18 lawsuits are already sitting on the -- I'm told  
19 they're sitting on the -- well, are sitting on the  
20 desks in the computers. And we're going to spend --

21 what? -- a zillion dollars trying to maintain and  
22 retain what we consider to be at least the status  
23 quo with the present regulations.  
24       And you're right. Time is fleeing, and I  
25 think you catch the gist of what we're talking

1 about. As Mr. Hess has said, we enjoy -- we enjoy  
2 talking with your representatives. They're  
3 gentlemen. And the couple ladies that I've seen are  
4 very nice ladies. They're hard-working. Everybody  
5 is well-intentioned. And something, however,  
6 happened to go wrong in a glitch somewhere, and  
7 somebody must have punched the wrong key when these  
8 regs came out, because they certainly do not favor  
9 tribal governments, tribal governments who are  
10 gaming at the present time, tribal governments who  
11 want to game in the present and want to game in the  
12 future.

13 To say that because -- it's so incredible.  
14 When you listen to the jargon -- I said I was going  
15 to quit, but I've just got one more. You know, give  
16 a lawyer a little time and he just keeps yakking.

17 To say that this machine is no good because  
18 it produces too much money, it looks too nice, why  
19 don't we just look at the definition of bingo, look  
20 at the compartment as an aid, and we say yes. We

21 don't need 51 percent or so of that screen with a  
22 bingo card on it. We don't have to have the people  
23 running around pushing four or five fingers on the  
24 buttons so that they can get the thing played in the  
25 10 seconds that you folks are proposing.

1           That we can make that Class II machine  
2   profitable, and the founders of and the people who  
3   drafted the Indian Gaming Regulatory Act can look at  
4   those machines and say, "My gosh, look at that  
5   machine. It's generating money for strong tribal  
6   government, tribal self-sufficiency and, by gosh,  
7   strong economic development."

8           Thank you for your time. And again, I say  
9   my comments are made in all due respect for  
10  everybody. I know you're doing what you think is  
11  right. I just don't feel that the people that are  
12  putting the pressure on this Commission -- and we  
13  don't need to name them, we know -- are doing a  
14  disservice to the Indian communities.

15          Thanks.

16          CHAIRMAN HOGEN: Perhaps for our  
17  edification, you could identify those who you  
18  believe are putting pressure on the Commission.

19          MR. LePERA: Well, let's start with the  
20  governors of Oklahoma, Nebraska, Washington,

21 et cetera; the Senators in those various states; the  
22 Congressmen in those various states; the governors  
23 in those various states. And I will not speak as to  
24 the politicians in the state of California.

25 CHAIRMAN HOGEN: Sir, I have not heard from

1 any of those folks.

2 MR. LePERA: Sure. I don't think we -- you  
3 know, for the record, I'm saying you're as blameless  
4 as possible. You're doing a great job. Somehow,  
5 some way, the regulations that I've reviewed are  
6 being promulgated by your office. And however that  
7 was done and whatever the forces were that generated  
8 them, we're taking the position that those are not  
9 regulatory issues, they're political issues that are  
10 intended to buttress the positions that are being  
11 taken by various states where Native Americans are  
12 having one heck of a time to be able to enjoy the  
13 benefits and the fruits of the Indian Gaming  
14 Regulatory Act.

15 CHAIRMAN HOGEN: One of the problems is  
16 that there's lack of clarity with respect to the  
17 distinction between technologic aids the tribes can  
18 use to do Class II gaming and the electronic  
19 facsimiles of games of chance that Congress has said  
20 are Class III.

21       The MegaMania machines that are the ones  
22 mentioned in most of those lawsuits that you  
23 mentioned were cumbersome player station terminals  
24 that you had to have 12 players to play before you  
25 could start, there had to be 48 bingo cards in play,



1 and it took over a minute to play those games.

2 Now, we've drafted a set of regulations  
3 that tries to include that player participation that  
4 the MegaMania courts said was key to the theory,  
5 that the play was outside the terminal; the terminal  
6 just aided the play.

7 And the games that could be played that are  
8 designed under the proposed regulations, you could  
9 play six of them in a minute as opposed to only one  
10 a minute in the court case. You can use the slot  
11 machine displays that the Lucky Tab II machines said  
12 were permissible.

13 But we are attempting to look seriously  
14 at the Indian Gaming Regulatory Act, its legislative  
15 history, and these court cases that you referred to,  
16 put together some rules the tribes can rely upon;  
17 that they can go out and make significant  
18 investments in equipment to enter into the Class II  
19 area or supplement what they are doing and be on  
20 solid ground, so that they don't have to worry that

21 tomorrow this Commission or the next Commission or  
22 the Department of Justice is going to swoop in and  
23 say, "That's Class III gaming being conducted  
24 without a compact," and they'll be out millions of  
25 dollars. Or perhaps worse yet, do that activity at

1 their peril, find out that they're going to be in  
2 violation of the Johnson Act and be criminally  
3 prosecuted.

4 We're trying to avoid those situations,  
5 avoid situations like existed in Oklahoma when the  
6 last Commission was faced with these challenges  
7 where tribal gaming facilities were closed, fines up  
8 to \$9 million were imposed on tribes. And it was a  
9 cumbersome, ineffective, the next day obsolete type  
10 of process.

11 That's why we need clarity here. And we're  
12 doing our level best, and we're not influenced by  
13 states or attorneys general or senators or  
14 governors. Rather, on our -- we're trying to do our  
15 sworn duty to uphold the law and to read and  
16 interpret this very well-intentioned Indian Gaming  
17 Regulatory Act so that this hard-fought-for economic  
18 development, tribal self-sufficiency can continue.

19 MR. LePERA: I think your comments were  
20 well-taken. We certainly do appreciate them, and we

21 take your comments for face value.

22       The only problem, it would appear to be, is

23 that the people -- the people, that is, other than

24 your Commission and your staff, are the people who

25 have been coming in here one after another from

1 state to state and the comments that you've gotten,  
2 appear not to agree with what the end result is  
3 going to be.

4 And we don't question your good intentions  
5 and the Commission's good intentions and the staff's  
6 good intentions of arriving at these results where  
7 there can be something that can be clear and  
8 definitive and final. But the people who have  
9 analyzed these reg- -- proposed regulations, the  
10 sessions that I've attended and have been attended  
11 throughout Indian country, I have not heard one  
12 voice that has ever said that the results that you  
13 intend to reach will be reached by these  
14 regulations.

15 And that's -- that's what we're riding on.  
16 And we appreciate your concern to do those  
17 objectives. The response back, however, is that  
18 your proposed -- and by "your," I mean the  
19 Commission's, the staff's -- proposed regulations  
20 aren't going to do that. In fact, they will be, as

21 the materials you've received, the adverse effects  
22 that these will have.

23       And to suggest that the tribes are timid  
24 about taking on the Federal Government as far as  
25 litigation is concerned, I suggest that at least a

1 number of tribes, and this particular tribe -- back  
2 in '88, we stood very firm, litigated against the  
3 United States, as you remember, when they tried to  
4 confiscate, et cetera, et cetera. We've spent years  
5 and years in mindless litigation, attempting to  
6 preserve and protect what the tribes have had.

7       So fear of the Federal Government is not  
8 there. But what we're attempting to do is to avoid  
9 those issues and be able to benefit by what is  
10 already out there. And we're just respectfully  
11 suggesting to you -- we're not questioning your  
12 intent, we're just questioning the result of what  
13 has taken place as is embodied in these regulations.

14       And I'm sorry. I didn't mean to interrupt  
15 you.

16       MS. COLEMAN: I wanted to just add with  
17 respect to the consultation and the decision to meet  
18 face-to-face with the tribal leaders, that was a  
19 direct result of last year's consultations, where we  
20 were involved in several public hearings. And the

21 tribal leaders got up and they said, "We don't like  
22 this. We want to sit down across from you face to  
23 face and have a discussion tribe to tribe."

24 And so the Commission listened to that.

25 And so they set up these so they could meet with you



1 face to face, government to government. And  
2 although I do know that the Commission, at the  
3 request of the tribes, is considering having a  
4 hearing, a public hearing now, that's the reason.  
5 It wasn't to eliminate any of the other tribes from  
6 hearing what you have to say, because they will hear  
7 it. It will be on the web as soon as we get it onto  
8 the web. But that's the reason, is because they  
9 were listening to you, as they have in the past.

10 MR. HESS: My point was that in the past,  
11 consultations that I've attended and represented the  
12 tribe on under President Clinton's Executive Order,  
13 or proclamation, that's the way it worked. And I'm  
14 just saying -- I'm not criticizing each tribe and  
15 what they want to do, I'm just saying if you go  
16 through the Executive Order of the consultation  
17 policy that President Clinton put out, you need to  
18 read that. Go from there.

19 MR. VALANDRA: I might suggest that the  
20 consultation policy that the Commission drafted and

21 adopted over a year ago --

22 MR. HESS: Was out for comment.

23 MR. VALANDRA: -- was a direct result of

24 President Clinton's order.

25 So consultation is one of those things

1 that -- people like to have it different ways and  
2 we're trying to accommodate that the best we can.

3 MR. HESS: I appreciate it.

4 MR. VALANDRA: I'd like to make one other  
5 request if possible. You made some very strong  
6 statements about the results of these regs. And one  
7 of the things that we're out here to do is to  
8 listen. And maybe not today, there isn't much time  
9 left. But if you're able to send us written  
10 comments about your view of the impact of these and  
11 how they can be mitigated, we certainly would want  
12 to hear that.

13 MR. LePERA: I'm sure we would be more than  
14 happy to do that. I'm sure they're no different  
15 than the piles of comments that you already have  
16 received, but we would be more than happy to respond  
17 to you.

18 MR. HESS: I just have one question on the  
19 independent gaming laboratory. How is that going to  
20 work? I mean, you know, as far as you guys testing

21 the machines, verifying them, approving them? Can

22 you explain how that process works?

23 CHAIRMAN HOGEN: Briefly, there are a

24 number of established gaming laboratories in

25 existence now that are serving tribes and other

1 gaming venues. We expect, if these regulations  
2 become final, a number of those and perhaps some new  
3 ones will apply to us to be certified as an entity  
4 that could test machines to see if they comply with  
5 these regulations.

6       So if a tribe and a manufacturer come up  
7 with a device or have a device on their floor that  
8 we want to get this certified so we can play it as  
9 Class II, it would go to the lab. The lab would  
10 test it against these regulations, and if the lab  
11 found that it complied with that, they'd say, "We  
12 certify this as complying."

13       MR. HESS: And that lab would be under your  
14 jurisdiction?

15       CHAIRMAN HOGEN: Well, we would license  
16 them, and they would send their report to us. If we  
17 agreed with their review, you're good to go.

18       MR. LePERA: They can keep their license?

19       CHAIRMAN HOGEN: No. That wouldn't have a  
20 bearing on it. If we found that every opinion that

21 they sent to us we disagreed with, we probably would

22 reconsider their expertise, but I don't expect that

23 would happen.

24       We would try -- if and when we disagreed,

25 we would sit down with the lab, we'd sit down with

1 the applicant and we'd say, "Here is the issue. Can  
2 we resolve this?" And my expectation is in most  
3 cases we'd get that resolved to their satisfaction  
4 and ours.

5 If we held tough and the machine wasn't  
6 changed, and the tribe and the manufacturer  
7 disagreed with the chairman's objection, they could  
8 appeal that to the full NIGC. The NIGC would take  
9 another look at it. If the NIGC, the full  
10 Commission said, "We affirm the chair's objection,"  
11 then that could be appealed to the U.S. District  
12 Court. If they overturn the chair's ruling, then  
13 the game would be certifiable, or certified.

14 MR. HESS: The court has the authority to  
15 issue a game or not?

16 CHAIRMAN HOGAN: Pardon me?

17 MR. HESS: I mean, the final outcome would  
18 be the Federal Court?

19 MR. LePERA: They review all of the appeals  
20 from the Commission.

21           MR. HESS: So they would be certifying

22 that, in other words?

23           MR. LePERA: The State -- in the compacts

24 that were signed in '99, one of the things they were

25 attempting to do was to have a certification agency.



1 And the objection on that was, is to give any one  
2 particular or two particulars a monopoly on the  
3 issue. You know, IGT is always the one everybody  
4 jumps up and says. And many people feel that to  
5 give one or two testing laboratories the monopoly on  
6 all that creates a number of issues. A number of  
7 issues.

8 So if you're proposing --

9 CHAIRMAN HOGEN: It's the model we've set  
10 up, and we'd be happy to consider different  
11 approaches.

12 MR. HESS: Thank you.

13 CHAIRMAN HOGEN: Okay. Well, I think our  
14 time has elapsed here.

15 MR. LePERA: Time for another break. Good  
16 luck.

17 CHAIRMAN HOGEN: Thank you.

18 (End of Bishop Paiute Tribe

19 discussions.)

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1                   YUROK TRIBE

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3           CHAIRMAN HOGEN: We're convened in Ontario,  
4 California, on July 26th, 2006, pursuant to  
5 publication in the Federal Register by the NIGC on  
6 proposed changes to definitions and some proposed  
7 regulations that will focus on distinguishing  
8 equipment tribes might use to conduct Class II  
9 Indian gaming which can be done without a  
10 Tribal/State compact from that required for  
11 electronic facsimiles of games of chance that  
12 constitutes Class III gaming.

13       Here on behalf of the Commission, myself,  
14 Chairman Phil Hogen, and Associate Commissioner  
15 Chuck Choney. We are assisted by our Chief of Staff  
16 Joe Valandra, who is here. Next to him is Michael  
17 Gross. And Alan Phillips from our Sacramento office  
18 is here. John Hay is also an attorney in the Office  
19 of General Counsel. And Eric Schalansky is our  
20 Regional Director from Sacramento. Penny Coleman,

21 to my left, is our Acting General Counsel. And  
22 Natalie Hemlock assists the Commission in our  
23 Washington office.  
24 We promulgated these proposed regulations.  
25 We've been consulting with tribes to get their input

1 to see what we might want to consider doing in  
2 either adopting them or revising them.

3 And to that end, we're here with the Yurok  
4 Tribe, and we would ask that you folks introduce  
5 yourselves and identify your relationship with the  
6 tribe so the court reporter will have that noted,  
7 and then we'd like to hear your comments in this  
8 connection.

9 MR. HART: Steven Hart, legal counsel for  
10 the tribe.

11 MR. PUZZ: Dennis Puzz, Jr., Executive  
12 Director, Yurok Tribe.

13 MS. SHAPIRO: Judy Shapiro. I'm a lawyer  
14 assisting Scott Crowell in his representation of the  
15 tribe.

16 MR. CROWELL: Scout Crowell, legal counsel  
17 for the tribe.

18 CHAIRMAN HOGEN: Very good.

19 MR. PUZZ: Well, if I can start off on  
20 behalf of the team and as the representative of the

21 tribal government, first we'd like to say thank you,  
22 Chairman, for giving us this opportunity to meet and  
23 discuss with you our issues with your proposed  
24 regulations for Class II.

25 It's a very germane issue for Yurok for a

1 couple of reasons: one being our location and our  
2 great need. We are the largest tribe in the state  
3 of California, with almost 5,000 members, and we  
4 have the greatest need. We only own 30 percent of  
5 our reservation due to past issues: the Allotment  
6 Act, Stone and Timber Act. A lot of our redwood was  
7 taken.

8 That has left us in great poverty, not only  
9 of our land base, but most of our people do not have  
10 electricity, they do not have telephone service,  
11 they do not have water or sewer. We have surface  
12 water systems is all we have upriver. In the  
13 downriver community, we are struggling with flooding  
14 yearly. We have lots of issues that we need to  
15 remedy.

16 And one of the proven ways to have economic  
17 development and the budget we need to take care of  
18 our people is through gaming. We're not sure we'll  
19 ever get a Class III compact from the State of  
20 California that will make sense for our tribe, so

21 one of the few ways that we can provide for the  
22 great needs of our tribe is through Class II  
23 development, and these regulations make that much  
24 more difficult for us.  
25 We have a lot of competition in our area.



1 We have the Resighini Rancheria, which is actually  
2 physically located within our reservation  
3 boundaries, who has now opened a Class III facility  
4 under the '99 model compact across the river from  
5 us. We have two gaming facilities within 30 miles  
6 to the north of us, both Elk Valley and Smith River.  
7 We have a gaming facility down south, it's Trinidad  
8 Rancheria. Blue Lake Rancheria, Bear River.  
9 Oversaturated area.

10       So we're not looking at gaming to provide  
11 what it does here in Southern California, but we are  
12 looking to it to provide for some of our needs and  
13 to help us diversify our economic development. But  
14 with the regulations that are proposed, we fear that  
15 our gaming will not be successful in Class II. We  
16 won't have a bank of Class II in our gas station  
17 that will be playable because of the long delays.  
18 They won't stop and play those machines. They can  
19 play Class III down the road, literally across the  
20 river.

21        So we hope you will take our technical  
22 arguments that the legal team will make on behalf of  
23 Yurok to heart and make the changes necessary for  
24 tribes like ourselves that are dependent on Class II  
25 for basic needs of our tribal members.

1           CHAIRMAN HOGEN: Thank you.

2           MR. CROWELL: We've shown lots of different  
3 contexts here in the last couple of days of  
4 circumstances the tribes are in.

5           What is significant about Yurok is because  
6 the Class III compacts that are on the table are so  
7 onerous, the tribe may look to just a Class II-only  
8 facility. It needs the ability -- as we were  
9 talking earlier, it needs the ability to say no to  
10 the State. And here we're trying to scratch out  
11 some type of survival, whether it can facilitate or  
12 enhance an existing, you know, business such as a  
13 gas station, whether it can employ a few people and  
14 break even is -- it still puts the tribe in a better  
15 position than it would be without pursuing a  
16 Class II operation.

17          And that's a context which tribes in this  
18 position oftentimes don't have the resources to  
19 travel and be vocal about their circumstances, but  
20 here is a -- you know, we have a living, breathing

21 situation.

22 And it's one of the greatest inequities.

23 Here's a tribe with the greatest need and the

24 greatest land base and the greatest population of

25 enrolled membership in the State of California, and

1 it's on the outside looking in, while very, very  
2 small tribes have Class III operations and are very  
3 successful.

4       So matters of dimes, matters of dollars  
5 makes a big difference to this tribe, and we hope,  
6 when you look to the Class II regs, that you keep  
7 that -- take that into account.

8       As we stated earlier, we think if you look  
9 at a number of different technical -- and I'll turn  
10 this over to Judy, but, you know, we believe that  
11 there are a number of areas where you can take a  
12 less onerous road in dealing with the tribes,  
13 whether it be in the context of the autodaub or in  
14 the context of the number of seconds between events,  
15 the restriction on play and the restriction on  
16 predrawn balls. We don't view those distinctions --  
17 those restrictions necessary to distinguish the  
18 games being played from one that's bingo and one  
19 that is not bingo. And we think that's where  
20 flexibility lies. And as you go forward, we'd like

21 you to consider revisions to the draft that's on the  
22 table.

23 I'll turn it over to you.

24 MS. SHAPIRO: Okay. In the Yurok  
25 context -- and I'll admit to not having been

1 spending a lot of time at Yurok lately -- my  
2 understanding is they need to run a bank of machines  
3 at some location a little bit distant from their --  
4 what the rest of the reservation is and perhaps  
5 where any bingo facility would be. It would be just  
6 a bank of games.

7       What that means in the context of your  
8 regulations is that the restrictive definition of  
9 what is bingo and what is similar to bingo is going  
10 to matter a lot for them. That if any game which is  
11 not a five-by-five card and not a 1-through-75 draw  
12 becomes similar to bingo, then none of those games  
13 are going to be playable because it has to be in a  
14 location where bingo is played. That greatly  
15 restricts their opportunities there.

16       If, then, the only bingo games -- and since  
17 they're all subject to the same rules, it hardly  
18 matters. If the only bingo game available is one  
19 which is slow and pretty much obscure to the player,  
20 and where there is opportunity immediately across

21 the river, what they have is nothing. They can't do  
22 a similar-to-bingo game. There's not an opportunity  
23 for variation. There's only the opportunity for a  
24 bingo game that requires repeated slow interaction  
25 for reasons that will not be obvious to the player.



1 And that's all they're going to have.

2 And we're not going to belabor the points  
3 that we keep on belaboring, but just as we have come  
4 in as a team with all these different contexts and  
5 with all these different focuses because our needs  
6 are different in these contexts, I'm sure that there  
7 are other tribes that have done so.

8 And it becomes important for this  
9 proceeding, to have the best possible outcome, if  
10 all of the tribes have access to that information as  
11 soon as possible in advance of the close of the  
12 comment period. So we're hoping that this  
13 transcription that you're making will be available  
14 timely so that each of the tribes will be able to  
15 learn from what the other tribes have said in this  
16 proceeding.

17 And we're also hoping that after all of  
18 this individual one-on-one consultation is done that  
19 there will be a larger proceeding, where there can  
20 be a dialogue and where these kinds of views,

21 including the views of people with greater technical  
22 expertise, the people who are regulators out in the  
23 larger industry, people who are the game designers  
24 and the engineers, where those views can be  
25 exchanged. And perhaps we can build from there to a

1 better understanding of what's necessary. Not just  
2 what's necessary, but what's possible.

3       Within the framework, as we've said before,  
4 we understand. It has to be in the framework of  
5 what the law requires, but we have different views  
6 of what the law requires. And I think it would be  
7 useful for the Commission to hear different views of  
8 what the technology might go on to in the next few  
9 years so, as best you can, you can anticipate, or if  
10 not anticipate, not impede.

11       In other agencies that are dealing with  
12 rapidly developing technology, the mission of the  
13 agency is to get out of the way of that development  
14 and not to impede it. And I'm very much afraid that  
15 the regulations, as currently proposed, would be a  
16 barrier to development that would exist only in  
17 Indian country, where in other jurisdictions, in  
18 State jurisdictions even now, there are locations  
19 that can play an electronic bingo game much faster  
20 and much more lucrative and much more effective, and

21 can put tribes out of business.

22       So if we end up with regulations that

23 essentially bar tribes from doing bingo, we've then

24 turned IGRA on its head. And I'm sure it's not a

25 result that you want. And I think we need to work

1 together to make sure it's not a result that we get.

2 MR. HART: Eight to ten seconds is an  
3 eternity in the modern world. And, you know, I  
4 talked earlier today about speed and not imposing a  
5 slow game on the tribes. But, you know, their other  
6 opportunity is 10 percent of their gross gaming  
7 revenue. And under a Class III gaming compact, you  
8 know, for these types of locations, there's just  
9 nothing left.

10 Giving the tribe an opportunity to offer  
11 the game of bingo in a format where people will be  
12 interested in the game, people other than, you know,  
13 people who have been playing for six or seven years,  
14 they've got to have the ability to attract  
15 customers.

16 There's not a whole lot of them along  
17 Highway 101 that far north in California. But, you  
18 know, at least if the game moves with some speed,  
19 they'll be able to do something with it.

20 So as Scott said, this is about dimes and

21 dollars. This isn't about millions and hundreds of  
22 millions. This is just about trying to make it work  
23 somehow.

24 That's all I have.

25 MR. CROWELL: Can you tell us why slowing

1 down the game is necessary to keep it as the game of  
2 bingo?

3 CHAIRMAN HOGEN: Well, in reading the  
4 Indian Gaming Regulatory Act, its legislative  
5 history, the cases have tried to sort out what's a  
6 permissible technologic aid and not.

7 A theory that kind of emerged from my  
8 reading of those was that the game had to be outside  
9 the equipment to a degree and there had to be,  
10 consequently, player participation. And if players  
11 are going to meaningfully participate and you're not  
12 going to make that, in this case, impermissible leap  
13 to an electronic facsimile of a game of chance  
14 where, in effect, the machine does all the work and  
15 the player does nothing, you need an interval for  
16 that participation to occur.

17 And we're trying to get to the right place  
18 as to what ought that interval be. And we've said  
19 in this proposal in a couple of instances two  
20 seconds would be appropriate. This, of course,

21 is -- would permit the play of a game much quicker  
22 and with much greater diversity than those games  
23 described in the early litigation, the MegaMania  
24 case, the Lucky Tab II case. It permits quite a lot  
25 of creativity by way of interim prizes and



1 consolation prizes and progressive prizes.

2       And some of the comments we've heard in  
3 this connection, there's a great attraction to  
4 having the opportunity to network and give  
5 progressive prizes. We came down here from hearing  
6 folks up in Tacoma, where the Washington state  
7 Appendix X game doesn't afford some of those  
8 progressive opportunities.

9       And so those are the kinds of things that  
10 we tried to consider to make sure we were going to  
11 have a fun, fair, attractive game, but yet readily  
12 distinguishable from those push-the-button ones, the  
13 machine does it all, electronic facsimile, that  
14 would constitute a Class III game.

15       MR. GROSS: If I might, Mr. Chairman, I  
16 think to use a term that was used yesterday in one  
17 of the meetings, what the Chairman is describing in  
18 brief summary, if I understand, is a slightly  
19 different paradigm than the one implied in your  
20 question. The exercise was not to define bingo

21 differently; the exercise was to define what is an  
22 electronic facsimile when you are playing bingo  
23 through the use of technologic aids, because at that  
24 point the device becomes Class III.

25 MS. SHAPIRO: Except for the way that you

1 have done it, to my understanding, is to say that  
2 any game played wholly electronically is a facsimile  
3 unless, and then it follows. It -- pretty much in  
4 the DOJ model, it follows the provisions for what is  
5 bingo under your accompanying regulations, and so  
6 the model flips back to, then, what is bingo for  
7 what is an exclusion from an electronic facsimile.

8       And with all due respect and based on my  
9 own experience, my generation thinks a lot slower  
10 than upcoming generations in electronic terms. And  
11 what I can't do fast, my kids can do at lightning  
12 speed. And that's only an analogy to what is  
13 happening in the technology of gambling and what is  
14 happening in the psychology of Class II.

15       So what seemed fast when MegaMania came  
16 out -- when the MegaMania game came out, we all  
17 said, "Wow. Look at that. You can do that." But  
18 that's old and that's done. And Scott and I watched  
19 someone play MegaMania two or three days ago. We  
20 actually saw one live at a site, and it was a

21 surprise. And this lady lasted through two game  
22 cycles. We almost didn't. And then she got up and  
23 left.  
24       And what seems fast to me and to you is  
25 much less fast to the experienced player. And five

1 years from now will be deathly slow to the  
2 experienced player and to the rest of the world.  
3 And what we don't want to do is freeze it based on  
4 our perception, which may not be as sophisticated as  
5 what is a meaningful interval?

6       A meaningful interval -- assuming that it  
7 is necessary to have that participation, then that  
8 player participation can meaningfully happen much  
9 faster than two seconds. And the perception of the  
10 ball drop can happen much faster than two seconds,  
11 particularly, as we've said, when you get into those  
12 second and third ball draws, and those ball draws  
13 are extremely minimal, you don't need to drag out a  
14 single ball release for two seconds for it to be  
15 perceptible. And I think that's what we're saying.

16       MR. GROSS: Okay. And if I could just  
17 follow on with that, if the line is drawn at  
18 electronic facsimile such that the entire game now  
19 is in the electronics, as it were, the intention of  
20 the regulations was to say all right, it's not an

21 electronic facsimile if there is something outside  
22 of the electronics. And that something can be as  
23 simple as the player's participation. Okay?  
24       Now, if that -- with that as the motivating  
25 distinction, all right, if what has come out in the

1 regulations has veered off of that or does not --

2 MS. SHAPIRO: That was certainly not clear  
3 to me.

4 MR. GROSS: -- or does not implement that,  
5 then that's what the Commission needs to know.

6 MS. SHAPIRO: Okay. I will tell you that  
7 my perception, and it may be a naive one, but my  
8 perception was that given that all the components of  
9 the game chance, you know, all the input of the  
10 chance and the outcome of the game were electronic,  
11 even if spread out over several boxes, so that it's  
12 no longer in the player terminal but, in fact, is  
13 something which interacts with other players, my  
14 perception was that that was going to make it a  
15 facsimile which had an exclusion "only if." And it  
16 seemed to me that it was following precisely on the  
17 DOJ model and their proposed legislation from last  
18 September.

19 And if the intent is something other than  
20 that, it was not clear to me and I don't think it's

21 clear to other people I've talked with, because  
22 frankly, I think we're seeing it as Catch 22, all of  
23 this is a facsimile unless you follow our rules.  
24 And I think that would greatly facilitate Johnson  
25 Act enforcement against games that perhaps you don't



1 need enforcement against, and that would be a very  
2 strong concern of mine; that it's not clear to me.  
3 And I don't feel that -- if you put in the  
4 preamble -- frankly, the preamble is not reliable in  
5 terms of intent because there are so many  
6 contradictions in it.

7       And so when you say the game is entirely in  
8 the electronics or all the components are  
9 electronic -- and I don't have the language. I can  
10 get it, but I don't have it right here. If what you  
11 are saying is that there is some other element of  
12 human interaction or player participation or some  
13 element of the game, I think you need to be more  
14 specific.

15       MR. CROWELL: The number of pushing the  
16 buttons is probably a good time for me to not  
17 correct the record, but talk about a recent  
18 development, because I know when we were in Tacoma,  
19 where I was talking about how the X game is played  
20 and how the State maintains that because it's

21 programmed to emulate pull tabs, it's not a slot  
22 machine. And we were talking about the number of  
23 pushes of the button, where you had to push it to  
24 get the pull tab and you had to push the button to  
25 open the pull tab.

1 I just got in an e-mail late yesterday that  
2 the State has now agreed to get rid of that  
3 restriction so that it would be one push of the  
4 button that both selects and opens the pull tab.

5 And it may be another case in point that  
6 some of these restrictions -- I think it still goes  
7 back to the essential fundamental characteristics of  
8 the game. And if you maintain the fundamental  
9 characteristics of the game, I think what language  
10 in the report talks about in terms of maximum  
11 flexibility is if you maintain those fundamental  
12 characteristics of the game, then whatever it's  
13 being used for, it is an electronic aid and not an  
14 electronic facsimile. And the key should be make  
15 sure that the game is being played is bingo.

16 And it was written in 1988. We've had  
17 great technological advances, and they're advances  
18 that Congress did pursue by this. They said, you  
19 know, use maximum flexibility. And it's like  
20 this -- the proposed regulations strike me as being

21 antithetical. It's restricting us from using our  
22 flexibility in offering a game that maintains those  
23 fundamental characteristics of bingo.  
24       But thanks for that clarification. That  
25 now gives me a much better idea where you're coming

1 from --

2 MS. SHAPIRO: Yeah. I want to think about  
3 that more.

4 MR. CROWELL: -- in terms of making your --  
5 you're looking at not necessarily a change in the  
6 bingo, but making sure that it's an aid as opposed  
7 to a facsimile.

8 MR. GROSS: Keep something of the  
9 fundamental characteristics of the game outside of  
10 the electronics. That's where this proposal marries  
11 the change in the definition.

12 MS. SHAPIRO: Then let me ask another  
13 question, because I don't want to jettison pull tabs  
14 necessarily. If I might ask this question.

15 My understanding is that the position is  
16 that all electronic pull tabs, however fundamentally  
17 identical they might be to paper pull tabs, are not  
18 acceptable in any form unless there is a tangible  
19 medium. And if that tangible medium is the element  
20 which is outside the play of the game, what if --

21 and I hesitate to say this, but what if, instead of  
22 that, there were human participation?

23       Suppose that an electronic pull tab game  
24 were to revert to what's now in Washington state  
25 with a two-touch game so that a player interacts

1 once to get a tab and interacts twice to open a tab.  
2 At that point you have two touches, but you have  
3 player participation and you have the added ability,  
4 then, to distribute the electronic pull tab deal  
5 much more efficiently and without the waste --  
6 without the ecological waste and without the player  
7 confusion.

8 MR. GROSS: Yeah. And I think quite some  
9 time ago we talked about that very thing. And for  
10 the life of me, I can't remember what the answer  
11 was.

12 MS. SHAPIRO: I know what it is in the  
13 regs.

14 MS. COLEMAN: I know what the answer is,  
15 and that is that we've looked at the statute, we've  
16 looked at the case law. And the case law doesn't  
17 permit it, and we're following the case law on that  
18 issue.

19 MS. SHAPIRO: Well, but if we're following  
20 the same logic for player participation as Class II,

21 and the same logic that permits an all-electronic  
22 bingo card, I think would still support an  
23 all-electronic pull tab. Even though there are  
24 cases, I don't think there is a case that has  
25 considered this kind of pull tab.



1 MS. COLEMAN: I believe there is. I think  
2 that if -- one of the cases if you look at it,  
3 you'll see that --

4 MS. SHAPIRO: One of the early ones?

5 MS. COLEMAN: Yes. One of the very early  
6 ones.

7 MS. SHAPIRO: Yeah, but I think the law may  
8 have moved on and that it may be more sophisticated,  
9 and it may be worth reconsidering it.

10 CHAIRMAN HOGEN: Well, we are striving for  
11 intellectual consistency here, and there are some  
12 things along the way that just kind of stuck in my  
13 brain, anyway, such as the Lucky Tab II cases saying  
14 the play is in the paper. And that's why the  
15 machine was permissible. It just aided in the play  
16 of that. And we've got MegaMania cases saying that  
17 the play is outside the game.

18 And we say that an electronic facsimile of  
19 the game of chance is Class III. And the courts  
20 having said, "Yeah, you can play pull tabs all

21 electronically, but then they then become that  
22 classic electronic facsimile of the game of chance;  
23 hence, they are Class III."  
24       So, you know, those were -- at least I kind  
25 of got stuck on some of those things. And I'm

1 certainly willing to listen to advice with respect

2 to this approach.

3 MS. SHAPIRO: We could agree not to play

4 all-electronic pull tabs within the D.C. circuit.

5 CHAIRMAN HOGEN: Pardon me?

6 MS. SHAPIRO: We could agree not to play

7 all-electronic pull tabs within the D.C. circuit.

8 MR. GROSS: Within the D.C. circuit?

9 MS. SHAPIRO: Yeah.

10 MS. COLEMAN: And you'd also have to do it

11 in the 9th Circuit, since that's where the pull tab

12 cases were.

13 MR. CROWELL: But the logic, if I'm

14 understanding the logic, then, if there were other

15 elements that could be taken outside of the game,

16 then you could eliminate that requirement of the

17 player participation of the push the daub, push the

18 button.

19 MR. GROSS: Yeah, that's -- right. That is

20 consistent with what the thinking is, as I

21 understand it.

22 MS. COLEMAN: Which is why it's taken out

23 of live-session bingo. If you're doing live-session

24 bingo and it's not all electronic, then it's okay to

25 have an autodaub because you have a live-session

1 bingo, you have people participating, people are  
2 actually playing the game. And so if you're  
3 disabled and you can't sit there and touch the game  
4 repeatedly, well, you can still get to play. But  
5 there are other people who you're playing against,  
6 and it's -- but it, unfortunately, is a much slower  
7 game because live-session bingo has a tendency to be  
8 "B6," and consequently a little bit slower than the  
9 games we're talking about.

10 MS. SHAPIRO: But if -- I've seen people  
11 standing -- sitting in front of the those electronic  
12 terminals and they're pretty disabled, and they have  
13 trouble with the repeated touches. Can't we give  
14 them an aid to the daubing?

15 MS. COLEMAN: In live-session bingo, no  
16 problem.

17 MS. SHAPIRO: No, no. But are we not going  
18 to -- don't we have an ADA requirement for the other  
19 terminals?

20 MR. CROWELL: And, also, you've got

21 live-session bingo sessions where a person will get  
22 up and go to the bathroom, come back, 20 balls have  
23 been drawn while he was gone, looks up at the board  
24 and, you know, daubs in all 20 balls and, you know,  
25 quits the session and, you know, realizes he's got

1 bingo and wins.

2 MS. COLEMAN: Right. But, of course, he  
3 had time to do that, which he would have missed  
4 about 20 games --

5 MS. SHAPIRO: But he has house rules to do  
6 that, that permitted him to catch up. And that's  
7 the difference.

8 CHAIRMAN HOGEN: Right. And we've  
9 considered those kinds of things. And I guess we  
10 could concede that there are some things that -- in  
11 those situations, they are exceptions, but if put  
12 into the electronic format they become the rule.  
13 That is, it would happen almost every time. It  
14 doesn't matter to daub interim daubs, just daub the  
15 last time and that's it. And that, then, takes that  
16 participation out.

17 Well, I think we've approached the time we  
18 set aside to discuss this coming to an end, and we  
19 have another tribe on deck coming in to speak with  
20 us. So this has been informative. Any additional

21 information you might submit to us addressing

22 these --

23 MR. CROWELL: We will submit written

24 materials. And I think we'll send whoever the judge

25 is a bottle of Excedrin.



1           CHAIRMAN HOGEN: Very good. Thank you very

2 much.

3           (End of Yurok Indian Tribe discussions.)

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1           SOBOBA BAND OF LUISENO INDIANS

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3           CHAIRMAN HOGEN: Good afternoon. Welcome.

4           I'm Phil Hogen, Chairman of the National

5 Indian Gaming Commission. We're here in Ontario,

6 California on July 26, 2006, convening pursuant to

7 proposals the National Indian Gaming Commission

8 published in the Federal Register on May 25th

9 relating to definitions and proposed regulations

10 that would focus on how to distinguish equipment the

11 tribes can use to conduct Class II uncompacted

12 gaming as opposed to the equipment that would

13 constitute electronic facsimiles of games of chance

14 that would be Class III.

15           With me here today is Commissioner Chuck

16 Choney. Today Chuck and I constitute the full

17 Commission. Joe Valandra is our Chief of Staff.

18 Next to him is Michael Gross from our Office of

19 General Counsel. Alan Phillips from our Sacramento

20 office is next, and John Hay is also an attorney

21 with the Office of General Counsel. Eric Schalansky  
22 is our Regional Director from Sacramento. And we  
23 have Penny Coleman, our Acting General Counsel. And  
24 Natalie Hemlock is an assistant to the Commission in  
25 the Washington office. And we have Manny Sanchez

1 and Frank Hernandez also with us from the Temecula  
2 satellite office. So they're the ones that are the  
3 closest to home.

4 So having said all that, would you please  
5 introduce yourselves to us for the record so that  
6 the reporter will know who's who, and tell us how  
7 you're affiliated with the tribe or the gaming that  
8 the tribe interested in. And then we'd very much  
9 like to hear about your situation and comments you  
10 have with respect to our proposals.

11 MR. PEEBLES: Okay. I'm Jerry Peebles.  
12 I'm the Chairman of the Soboba Tribal Gaming  
13 Commission. Soboba reservation is located about  
14 40 miles down the road here. I don't know if you  
15 guys have ever visited there, but it's reasonably  
16 close to it here.

17 And with me today is Alex Sanchez, Gaming  
18 Commissioner; and Celeste Hughes, Gaming  
19 Commissioner. We comprise the three Gaming  
20 Commissioners of the STGC. And basically, that's

21 our introduction.

22 CHAIRMAN HOGEN: Very good. We would,  
23 therefore, like to hear your comments regarding the  
24 proposals.

25 MR. PEEBLES: Okay. Just so you know,

1 currently Soboba has no Class II machines on its  
2 property. We currently are at the 2,000 maximum  
3 allowed under the California compact. But again,  
4 you know, we wanted to take this opportunity to meet  
5 with you guys face-to-face, because down the road  
6 the plans and aspirations of the tribe could change  
7 and, of course, we want to always make sure that we  
8 have a choice to voice our concerns.

9       We've put together a few questions that we  
10 have. You might have already heard them, but this  
11 is our chance, of course, to ask them and hear them  
12 face-to-face with you.

13       So, Celeste, do you want to -- Alex?

14       MR. SANCHEZ: My initial question was what  
15 are the time frames for the completion of the  
16 technical standards?

17       CHAIRMAN HOGEN: We hope to publish the  
18 technical standards that we've actually been  
19 drafting for a year or so now. We published two  
20 drafts of those standards and published them on our

21 website. But when it came time to publish these  
22 classification proposals, we discovered that the  
23 technical standards had become a little obsolete,  
24 given some recent advances in technology.

25       So I'm hopeful that next week we'll publish



1 that companion set of technical standards in the  
2 Federal Register. There will also be a comment  
3 period for that.

4 MR. SANCHEZ: So we'll be able to see that  
5 on your website?

6 CHAIRMAN HOGEN: Yes. And in the Federal  
7 Register, on their website.

8 MR. SANCHEZ: Another question to that.  
9 Will there be a task force, or has there been a task  
10 force developed to comment on the technical  
11 standards?

12 CHAIRMAN HOGEN: When we first recognized  
13 that this was an issue that needed addressing, we  
14 asked tribes to nominate members to a Tribal  
15 Advisory Committee. We aren't the first commission  
16 that's looked at the challenge of how do you better  
17 define the difference. The previous commission had  
18 proposed some regulations and then withdrew them,  
19 although they had -- they did amend some of the  
20 definitions. And they suggested that if and when

21 this were done again, it would be useful to have a  
22 Tribal Advisory Committee.

23       So we got those nominations from quite a  
24 number of tribes, selected some very well-qualified,  
25 talented, smart folks from tribal gaming operations

1 and met quite a number of times with that advisory  
2 committee. In our preamble to these proposed  
3 regulations, we specify some of the discussions we  
4 had.

5 We didn't take all of their advice and they  
6 didn't like everything we wrote, but they were very  
7 useful and sometimes brought us back to reality.  
8 That is, we were thinking in theoretical terms, and  
9 some of those folks who had been long-time gaming  
10 commissioners said, "If you do it that way, we're  
11 going to have issues on the floor a dozen times a  
12 night and that's not going to work." And we tried  
13 to listen to those kinds of things.

14 MS. HUGHES: Regarding the technical  
15 standards, as technology is continuing to advance,  
16 how will the technical standards keep up, I guess,  
17 with the changes or advancements in technology?

18 CHAIRMAN HOGEN: Well, if experience is any  
19 guide, they'll probably be obsolete the day that  
20 they're final. But we'll try to keep them revised,

21 probably have a committee in session and on a  
22 standing basis to assist us with that. And  
23 hopefully, like we've been doing with the minimum  
24 internal control standards, try to address new  
25 technologic developments and keep them current.

1           MR. SANCHEZ: I had another question on how  
2 would the new regulation affect the previously  
3 approved Class II gaming devices, multimedia and  
4 nova games?

5           CHAIRMAN HOGEN: Okay. Well, there have  
6 been approvals, if we can call it that, in a couple  
7 of respects. There have been a number of court  
8 cases where machines, primarily the MegaMania,  
9 multimedia bingo player station game, and some pull  
10 tab dispenser games were challenged and then  
11 approved.

12          And then building on those, NIGC, from time  
13 to time has issued advisory opinions. In those  
14 advisory opinions, we cautioned that we were going  
15 to be coming out with regulations down the line, and  
16 they might have to be modified after that.

17          But we -- we realize that some of those  
18 previously approved games would have to have some of  
19 their features altered to comply with the  
20 regulations. And once the regulations became final,

21 assuming we decided to do that, then there would be  
22 a six-month period of time for tribes to implement  
23 and get those games certified and, hopefully,  
24 whatever changes needed to be made could be made in  
25 that time frame.

1       MR. SANCHEZ: So that's considered like the  
2 grandfather period?

3       CHAIRMAN HOGEN: Well, you could call it  
4 that, although in terms of saying just because it  
5 was approved once, it will always be approved,  
6 that's not the position we're taking.

7       MR. VALANDRA: It's really more of a  
8 transition period rather than a true grandfather  
9 clause.

10       MR. SANCHEZ: I see. But that's affecting  
11 the Class II games that are currently on the floors  
12 now, like, let's say, Morongo or Pechanga?

13       CHAIRMAN HOGEN: There's probably a lot of  
14 things we don't know about all of the games that are  
15 being played as Class II right now. We've heard  
16 estimates of 50,000 machines throughout Indian  
17 country. A number of them are being played just  
18 exactly the way we wrote our advisory positions.  
19 Some of them were built that way, but then modified  
20 in the way they are currently being played.

21        One of the big modifications is the  
22 advisory opinions addressed a game that required  
23 some intervals for players to participate, and those  
24 have been eliminated. You just touch the button  
25 once, and then the game plays itself and it's over.



1       So those games under regulations that look  
2 like those that we have proposed now wouldn't be  
3 permissible and, presumably, wouldn't pass the  
4 certification test.

5       MR. SANCHEZ: I see.

6       MS. HUGHES: I was wondering, has the NIGC  
7 resolved the concerns of the Department of Justice  
8 which insisted that the prior Class II regulations  
9 did not go far enough in defining and regulating  
10 Class II gaming devices?

11      CHAIRMAN HOGEN: Well, we spent basically  
12 all last summer talking with the Justice Department,  
13 trying to address concerns they had expressed about  
14 our first proposals in our fifth draft of these  
15 classifications.

16      One of the developments since that time is  
17 they have drafted and sent to Capitol Hill a  
18 proposal to amend the Johnson Act to carve out an  
19 exception for these technologic aids. And I expect  
20 before we're done with this regulating-writing --

21 regulation-writing process, we'll hear again from  
22 the Justice Department about their thoughts on this.  
23 But we think that the proposal that they  
24 are making to Congress and the regulations we are  
25 writing are compatible and are workable together.

1 MS. HUGHES: Not being a real technical  
2 person with Class II games, if I could just get  
3 clarification on how the 20 percent plus one cent  
4 price determination was developed.

5 CHAIRMAN HOGEN: Well, one of the features  
6 of traditional bingo -- and we realize you don't  
7 have to always follow tradition -- but  
8 traditionally, there was some real significance to  
9 being the winner of the bingo game. Typically, you  
10 won the big prize.

11 Well, these electronic games that were  
12 being proposed to us, in some cases made that almost  
13 insignificant. Just a fraction of a bet was going  
14 to be awarded to win that and that the real money,  
15 so to speak, was in the consolation prizes or the  
16 interim prizes. So we thought, in keeping with  
17 that, the game traditionally known as bingo, that  
18 Congress mentioned there should be some significance  
19 to winning the bingo game.

20 And so we said well, you should at least

21 win 20 percent of what you bet and win at least a  
22 penny. So you couldn't be just awarded a  
23 one-hundredth of a cent for winning the bingo game  
24 and take your chance to see if you won some interim  
25 bet.

1 MS. HUGHES: And the next question is how  
2 does NIGC answer the critics that the purpose of the  
3 proposed regulations are only being issued to slow  
4 down the game? That is not -- because that's not  
5 going to be economically viable for many tribes.

6 CHAIRMAN HOGEN: Well, we think that  
7 Congress intended there was going to be a difference  
8 between slot machines of any kind and technologic  
9 facsimiles of games of chance and those technologic  
10 aids to the play of Class II games. And that's what  
11 we're trying to focus on, is just what is that  
12 difference?

13 One of the theories that kind of evolved is  
14 we studied the rules for bingo in the Indian Gaming  
15 Regulatory Act, the legislative history that  
16 supported that, and the cases that were decided  
17 thereafter was that the game needed to be outside  
18 the machine, so to speak. It couldn't all be in the  
19 machine, and there had to be some player  
20 participation. The game couldn't play without that

21 player participation.

22       Well, in the game of bingo, the player

23 covers the numbers when they are called. And there

24 has to, therefore, be, in our view or in my view, an

25 interval to give them a chance to cover. And we set

1 these time frames so that we think it could be a  
2 fast game. You could play maybe six games per  
3 minute; whereas, in the MegaMania games, those that  
4 were considered by the courts, took over a minute to  
5 play one of those games. You had to have 12  
6 players, you had to have 48 bingo cards. And the  
7 model that we would say is permissible here could be  
8 played by as few as two players and could be played  
9 in 10 seconds or less.

10 MS. HUGHES: How does NIGC differentiate  
11 between classification standards and technical  
12 standards? It appears that a lot of the regulations  
13 that are being proposed are technical in nature.

14 CHAIRMAN HOGEN: Well, let me take a shot  
15 at it and then maybe Michael, who is working more  
16 closely with those technical regulations, can  
17 elaborate on that.

18 But we're trying to talk about the rules or  
19 the characteristic of the play of the game in these  
20 classification standards, and the technical

21 standards talk more about what's in the black box,  
22 so to speak. What you have to do to ensure that  
23 that random number generator that's going to be used  
24 to call the bingo numbers is indeed random; make  
25 sure that it's a secure system and somebody's not



1   hacking into it or tampering with it.

2           Michael, do you have other comments?

3           MR. GROSS: That's it in a nutshell. The

4   technical standards are designed to be gaming

5   neutral, if you will; that they don't address

6   anything about the specifics of playing bingo or

7   playing pull tabs or games similar to bingo. They

8   simply talk about how you build a box, whatever game

9   you happen to be playing on.

10          So it addresses the minutia of the hardware

11   and the software. Not the game software, but rather

12   the software that sends communications back and

13   forth across the line, the software that encrypts

14   communication so that you can't eavesdrop on them;

15   the software that assures the -- your Commission

16   that the games that are loaded on the box haven't

17   been tampered with, because it can provide you with

18   a unique key -- sorry. The word just dropped out of

19   my head.

20          MR. SANCHEZ: Signature.

21 MR. GROSS: Thank you. Signature.  
22 They say we don't particularly care -- we,  
23 the standards, don't particularly care what method  
24 you use to come up with that signature, provided  
25 that you meet certain minimum standards. Like can

1 it address all the files in all the directories on  
2 whatever medium you have built into the game? So  
3 long as it works and it satisfies the tribal Gaming  
4 Commission.

5 How many keys do you need to open your cash  
6 box? Where does the cash box have to live? It has  
7 to be behind the locked front door.

8 Again, so all of those things. And we can  
9 make lists of them. And in fact the standards do  
10 make a list of them. It's just game-neutral. How  
11 do we ensure the integrity of the box? How do we  
12 ensure the integrity of the game, whatever it is?  
13 How do we ensure and safeguard the tribal assets?

14 MS. HUGHES: What will the comment period  
15 be -- our time frame be for the technical standards?

16 CHAIRMAN HOGEN: We hope to get those  
17 published in the Federal Register next week, and  
18 we'll set the date for that comment period. I  
19 expect it will be about 30 days. But because there  
20 is a relationship between these classification

21 standards and those, we may extend the comment  
22 period that will now end on August 23rd to  
23 coordinate or correspond to that date.  
24       So we haven't fixed it yet, but there will  
25 be, I think, an adequate period of time to comment.

1       MR. PEEBLES: In your words, when we go  
2 back to go our tribal council and we report about  
3 the meeting, what do you think would be best, from  
4 our standpoint, the reasons for adopting what you  
5 guys have put out?

6       CHAIRMAN HOGEN: Well, there are tribes all  
7 over the country that very legitimately look to  
8 Class II gaming for a very significant reason. In  
9 some states they can't get Class III compacts.  
10 That's the only game in town, so they've got to play  
11 the game.

12       In other states, like California, there's a  
13 limit on the number of devices, not only maybe  
14 permissible but maybe available. And I know that's  
15 a big subject of contention between the tribes and  
16 the State. But you might need or want to supplement  
17 that market. If you're going to negotiate with the  
18 State for a Class III compact, you need to know and  
19 they need to know that you've got another place to  
20 go if they won't come to the table and agree.

21       A problem we have right now is where you  
22 can go or what you can do is uncertain. You don't  
23 know, if you invest millions of dollars in Class II  
24 equipment, that maybe tomorrow NIGC or the  
25 Department of Justice is going to come along and

1 say, "Sorry, fellas. That's Class III gaming. You  
2 can't use that equipment anymore."  
3 If we have a set of regulations, and  
4 hopefully we will and hopefully they will permit a  
5 fast, fun, attractive, profitable game the tribes  
6 can play, then you're on solid ground when you make  
7 those investments. You're on solid ground when you  
8 go talk to the State of California and say, "Well,  
9 we may not do what you're proposing, but we're going  
10 to go home and do Class II gaming, and this is what  
11 we can do."

12 So I think that's the primary goal we seek  
13 to achieve. And we'd very much like to put behind  
14 us this long nightmare that we've been through,  
15 trying to stumble our way to the right place. It's  
16 really been a frustration, taken up a tremendous  
17 amount of time and energy. Not just for the NIGC.  
18 You know, we're willing to do the work. But tribes  
19 have had to focus on this too. It needs clarity and  
20 it needs finality.

21           COMMISSIONER CHONEY: You might want to  
22 advise your council that if they're going to spend  
23 all that large amount of money on upgrading or  
24 buying additional machines, specifically Class II,  
25 that they're going to want to make sure that they're



1 going to get their money's worth.

2 In some states, Oklahoma as well as in  
3 California, there's some less-than-scrupulous  
4 vendors who come in and take advantage of these  
5 tribes. And they'll take advantage of the vagueness  
6 in the regulations now and sell them a bill of  
7 goods, saying this is a Class II machine, which in  
8 fact, it's not.

9 So who suffers? Your tribes suffers. What  
10 happens to the vendors? Nothing. They walk. They  
11 get their machines back and they go up the street  
12 and sell it to another tribe.

13 So you could tell your -- advise your  
14 council that the money they're going to spend will  
15 be well worth it.

16 MS. COLEMAN: Could you tell me how many  
17 Class II devices you have right now?

18 MR. PEEBLES: None.

19 MS. COLEMAN: So you're just looking into  
20 that as a possibility?

21 MR. PEEBLES: Yes.

22 MS. HUGHES: I have a question. Will the

23 minutes be available upon request?

24 CHAIRMAN HOGEN: We hope to have them all

25 available relatively soon. I don't know that we

1 have an exact deadline. We're going to Oklahoma to  
2 do the same kind of thing here in a week and a half,  
3 and then we'll have this packaged together. And I'm  
4 sure we'll need to do a little organizing, but they  
5 will be available relatively soon.

6 MR. VALANDRA: They'll be on our website.  
7 Not only the transcripts, but all of the written  
8 comments that we've received will be on the website  
9 too.

10 MR. PEEBLES: Anything else? No?

11 CHAIRMAN HOGEN: All right. We thank you  
12 very much for your --

13 MR. PEEBLES: I would like to say I  
14 recognize Manny for coming over. And we have a  
15 great relationship with him and Frank, both. They  
16 visit us quite often. We like to see them. And  
17 they do a great job for you guys. And Eric.

18 CHAIRMAN HOGEN: We were wondering if those  
19 guys ever did anything. That's good to hear.

20 Okay. Thank you.

21 (End of Soboba Band of Luiseno Indians  
22 discussions.)  
23 (The proceedings were concluded at 4:40 p.m.)  
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3 I, the undersigned, a Certified Shorthand

4 Reporter of the State of California, do hereby

5 certify:

6 That the foregoing proceedings were taken before

7 me at the time and place herein set forth; that any

8 witnesses in the foregoing proceedings, prior to

9 testifying, were placed under oath; that a verbatim

10 record of the proceedings was made by me using

11 machine shorthand which was thereafter transcribed

12 under my direction; further, that the foregoing is

13 an accurate transcription thereof.

14 I further certify that I am neither financially

15 interested in the action nor a relative or employee

16 of any attorney or any of the parties.

17 IN WITNESS WHEREOF, I have this date subscribed

18 my name.

19

20 Dated: \_\_\_\_\_

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24

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G. Joanne Bergren, CSR, RPR

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Certificate No. 6334